

Military Relocation PA Memo Comment Form

2021

If submitting via **e-mail**, scan and send to: criwebcomment@navy.mil

If submitting via **postal mail**, send to:

Attn: CRI Web Comments
Code EV23, NAVFAC Pacific
258 Makalapa Drive, Suite 100
JBPHH, Hawaii 96860-3134

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PROJECT: Multiple Vertical Construction Project in Camp Blaz Main Cantonment Area

SUBJECT: PA Memo #1, Design and Construction of P-311 Central Fuel Station, P-312 Distribution Warehouse, P-317 Consolidated Explosive Ordnance Disposal (EOD) Compound and P-804 Central Issue Facility

Date: 04/12/21

Name: Jonnalyn Farnum

CRI User Name (if you don't want your real name to be posted with your comment on the CRI web site):

E-Mail Address:

and/or

Postal Mail Address: _____

COMMENTS: The four projects listed in this Programmatic Agreement memo, are all located in Finegayan, Guam, on a limestone plateau. The overall size of this proposed infrastructure totals at approximately thirty acres. P-311, the Central Fuel Station consists of 6 acres of land alone. This facility will be used to store fuel, fill up on fuel, and to provide vehicle and equipment ready fuel storage facilities for Camp Blaz.

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COMMENTS: P-312 is planned to be a distribution warehouse, and P-804 is proposed to be a Central Issue facility, both taking up fourteen and a half acres. These facilities will be used to support Supply, Food Services, and MEDLOG. P-317 will be used to process, and store materials and equipment. Regardless of the many geographical surveys that were done prior to construction starting, these surveys do not consider the damage being done to ancient burial lands. The programmatic agreement fails to mention an alternative plan, in the event that construction reveals ancient artifacts. I believe construction for this expansion should have been halted as soon as they found ancient remains. I oppose further structural development and expansion of the proposed projects above, mainly due to the inference that more artifacts will be destroyed in the process, and our ancestors will continue to be rudely awakened. The decimation of Måguak, "a living museum containing significant Chamoru artifacts, remnants of the ancient village of Måguak, and the remains of our ancestors who lived and were laid to eternal rest there (Reily, 2021)." This ancient CHamoru village is just one of many that have been decimated by military expansion, and by an overall disregard to the CHamoru history and culture. The amount of "required" land nearly doubled in size. This project alone requires almost 30 acres of land, meanwhile, many other federal properties such as DOD Nimitz Hill Housing are owned by the federal government but are no longer in use. The general public, the CHamoru people, and especially the parents of young children on the island should be concerned on what these ongoing expansion projects entail, and how much of an impact it will have on the lives of future generations. I am extremely concerned harmful long-term effects on the people who live in close proximity of these proposed facilities. I am also concerned about the overall damage to aquifer, water contamination, and the release of toxins such as radon (a radioactive chemical that can lead to lung cancer), damage to health of overall public. While some citizens may feel safer with having a Marine base on Guam, I feel that our affiliation with the military simultaneously puts a target on the island. According to Victoria-Lola Leon Guerrero, "The defense that the U.S. speaks of, means the defense of the continental United States. Guam will always be the first place that is attacked so long as we belong to, but are not part of, the United States, so their national security puts our lives greater at risk (Kaur, 2019)." While I do appreciate the building of the Repository, it seems like a temporary solution to a long-term problem. I also believe that ancient burial sites are more valuable when undisturbed. Keeping these findings in place is more beneficial to the CHamoru history and culture. I am surprised by the lack of additional planning by the military in the instance that historical artifacts are unearthed. Did they fail to do so because they knew they could continue with construction regardless? Finally, how can we, the people of Guåhan, trust our government after the recent deceit by the military and our government? With the voices of Guåhan constantly going unheard, I believe a public hearing should be held to determine certain restrictions to the current programmatic agreement, and the need for the Programmatic Agreement to be renewed annually.

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SUBJECT: PA Memo #1, Design and Construction of P-311 Central Fuel Station, P-312 Distribution Warehouse, P-317 Consolidated Explosive Ordnance Disposal (EOD) Compound and P-804 Central Issue Facility

Date: 4.16.21

Name: Miranda Duenas

CRI User Name (if you don't want your real name to be posted with your comment on the CRI web site):

E-Mail Address: _____

and/or

Postal Mail Address: _____

COMMENTS: Please see attached document.

Hafa Adai. The construction projects outlined below pose significant threats to cultural resources as well as the health of citizens and the environment. The military's track record regarding the handling of natural and cultural resources leaves much to be desired in terms of transparency with Guam's general public. The most significant problems are the past handling of 17 archaeological sites and the inevitable threat of contamination to the Northern Aquifer due to military buildup projects in the area.

As recently as August 2020, more archaeological sites were discovered at the Dededo main cantonment (Kaur, 2020). This discovery brings the total count of human remains sites up to 17, located within the Dededo main cantonment, LFTRC, and Andersen South (Kaur, 2020, para. 14). In addition, some 29 artifact sites have also been discovered within the Dededo main cantonment, LFTRC, and Andersen South (Kaur, 2020, para. 14). These discoveries are significant to furthering our knowledge and understanding of Guam's history, as well as being culturally significant to Guam's indigenous people.

On March 3, 2021, news reports stated that DoD and Guam SHPO had announced that the general public would not be informed of any more newly discovered archaeological sites (Kaur, 2021). This lack of dialog about the CHamoru people's cultural resources and historic sites emphasizes the military's priority in completing buildup projects rather than, at the very least, informing the public about the irreversible impact these projects have on culturally and historically relevant sites. On that note, further injury was added after the revelation that a reburial ceremony of discovered human remains took place at Marine Corps Base Camp Blaz on November 4, 2020 without the public's knowledge or participation (Kaur, 2021). This disregard for community input further illustrates the lack

of communication and consideration for the concerned citizens of Guam on behalf of DoD.

Concerns regarding projects P-311 Central Fuel Station, P-312 Distribution Warehouse, P-317 Consolidated EOD Compound, and P-804 Central Issue Facility, which will be constructed in the same project location that previously underwent clearing for project J-001B (P-311, P-312, P-317, and P-804 PA Memo # 1, 2021, p. 1), include issues such as water safety and possible contamination of the NGLA, which acts as the main water source for the north and central villages of the island, as well as the potential to exhaust the NGLA of its content. Though it might appear unrelated, the reality is that the construction and operation of these buildings will contribute to the same concerns mentioned previously, as both construction and operation will make considerable demands of resources like the NGLA.

A study was conducted by the USGS which found that several factors including climate change and the military buildup are threats to the drinkability of the water in the Northern Aquifer, which supplies about 80% of the island's drinking water (Gingerich et al., 2019). The military buildup proposes the drilling of 10 new wells and using 46.62 million gallons per day (NGLA). Because of this, water salinity may increase. The same study also proposed theoretical scenarios in which the usage of the freshwater lens had to be mitigated in ways such as drawing water more shallowly from the wells to compensate for the strain during the military buildup, especially during times of drought (Gingerich et al., 2019). Possible droughts could be brought on by climate change, and this would equate to less freshwater entering the lens. As the NGLA is predominantly recharged by rainfall, this poses a serious issue. Coupled with a rising sea level, which increases the

likelihood of saltwater entering the freshwater lens, this would make the drinking water more saline and possibly undrinkable over long-term usage. Additionally, DoD plans to relocate approximately 5,000 Marines to Guam. The increase in population would mean increased demand for water supply, which would give the NGLA less time for recharge and will affect civilian livelihood as well as the livelihood of Marines and their dependents.

Because of these reasons, I strongly urge DoD to reconsider the impact that the continued undertaking of these projects will have on the residents of Guam and Guam's valuable resources. The risks posed to the NGLA are too great to overlook and pose a considerable threat to the livelihood of those who rely on it.



Miranda Duenas

References:

"Digital Atlas of Northern Guam." *North.hydroguam.net*, Water and Environmental Research Institute of the Western Pacific , north.hydroguam.net/background-NGLA.php.

Gingerich, S.B., Johnson, A.G., Rosa, S.N., Marineau, M.D., Wright, S.A., Hay, L.E., Widlansky, M.J., Jenson, J.W., Wong, C.I., Banner, J.L., Keener, V.W., and Finucane, M.L., 2019, *Water resources on Guam—Potential impacts of and adaptive response to climate change*: U.S. Geological Survey Scientific Investigations Report 2019–5095, 55 p., <https://doi.org/10.3133/sir20195095>.

Kaur, A. (2020, August 31). *More human remains disturbed at Dededo base; here's what sites are recorded so far*. Pacific Daily News. <https://www.guampdn.com/story/news/local/2020/08/30/more-human-remains-disturbed-construction-dededo-base/5671628002/>

Kaur, A. (2021, March 3). *Historic Preservation Office, military won't share information on more burials at Camp Blaz*. Pacific Daily News. <https://www.guampdn.com/story/news/local/2021/03/03/preservation-office-military-wont-share-information-more-burials/6858564002/>

COMMENT #3

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SUBJECT: PA Memo #1, Design and Construction of P-311 Central Fuel Station, P-312 Distribution Warehouse, P-317 Consolidated Explosive Ordnance Disposal (EOD) Compound and P-804 Central Issue Facility

Date: April 2nd, 2021

Name: Richard Lund

CRI User Name (if you don't want your real name to be posted with your comment on the CRI web site):

E-Mail Address: 

and/or

Postal Mail Address: _____

COMMENTS: My name is Richard Lund, I live in San Diego, CA, and I am a member of the Sunrise movement, an organization determined to achieve environmental justice. I am writing to demand that you stop the military construction of the Live Fire Training Range Complex in Litcheyam. 1,200 acres (900 football fields) of home and agricultural land is being stolen from the people

COMMENTS: of Guam. What's more is that this land sits on top of an aquifer that provides 90% of Guam's drinking water. An estimated 6.7 million bullets are expected to be shot over the Northern Lens Aquifer. I have zero confidence that the US military has any regard or concern for the damage they are doing to this primary water source of Guam. Even with 25,000 signatures, 2 passed resolutions, and unyielding pleas of the locals the Department of Defense has moved to destroy endangered species habitats, ancient settlements, and burial sites. This is environmental racism at its finest. Unfortunately, I have come to expect nothing less from our disgusting military.

This is all I know from our military. We take sacred land from people just so we can fire guns, disgraceful. How can we call ourselves the land of the free when we are modern day colonizers of Guam, Puerto Rico, & Samoa? The people of Guam deserve to have their voices heard in regards to their land. In support of Prutehi Litekyan, I demand that you:

- Establish a local committee to study the impacts and necessity of the live-fire range complex, and report findings to the community
- Establish a plan for increased local oversight of the Northern Guam Lens Aquifer
- Prevent further disruption of ancient sites and preserving historical sites in place
- Request detailed maps from the military of historic sites on base
- Provide status reports on the local government's oversight of the buildup, including site visits and mitigation efforts

Please, do not let environmental racism be the legacy of the United States. We can do better. Respect the people of Guam.

COMMENT #4



ATTORNEYS AT LAW

719 Second Avenue
Suite 1200
Seattle, WA 98104
T 206.395.7630
F 206.257.0780

Cheerful Catunao
D 206.489.5938
ccatunao@nossaman.com

Refer To File # 000010-0602

April 16, 2021

Via Email – criwebcomment@navy.mil

Naval Facilities Engineering Command Pacific
ATTN: CRI Web Comments, Code EV23
258 Makalapa Drive, Suite 100
Pearl Harbor, Hawaii 96860-3134

Re: Project(s): P-311 Central Fuel Station; P-312 Distribution Warehouse; P-317 Consolidated EOD Compound; and P-804 Central Issue Facility

Project Location: Naval Base Guam Telecommunication Site (“NBGTS”)

Hafa adai:

Thank you for the opportunity to comment on the Department of Defense’s (“DoD”) Programmatic Agreement (“PA”) Memo, entitled “P-311, P-312, P-317, and P-804 PA Memo # 1 (PUBLIC)” dated March 2, 2021, (“PA Memo”) regarding the above-captioned projects.¹ Pursuant to Stipulations IV.E. and V.B. of the *Programmatic Agreement Among the Department of Defense, the Advisory Council on Historic Preservation, the Guam State Historic Preservation Officer, and the Commonwealth of the Northern Mariana Islands State Historic Preservation Officer Regarding the Military Relocation to the Islands of Guam And Tinian*, dated March 9, 2011 (“2011 PA”), on behalf of Prutehi Litekyan: Save Ritidian (“PLSR”), we respectfully submit these comments **opposing** the PA Memo’s “Identification of Historic Properties;” and “Determination of Effect” for the reasons provided below.

¹ NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND (“NAVFAC”) PACIFIC, P-311, P-312, P-317, and P-804 PA Memo # 1 (PUBLIC), (March 2, 2021), https://www.navfac.navy.mil/content/navfac/en/navfac_worldwide/pacific/about_us/cultural_resources/programmatic-agreement-memos-open-for-public-review/jcr_content/par1/pdfdownload_1868622100/file.res/PA%20Memo%201_P311%20P312%20P317%20P804.pdf.

1. INTERESTS OF PRUTEHI LITEKYAN: SAVE RITIDIAN

Established in 2017, PLSR is a community-based organization dedicated to protecting and preserving the natural and cultural resources of Guam. This includes the areas proposed to be used for relocating U.S. Marine Corps forces currently located in Okinawa, Japan to Guam, and for military live-fire training.² PLSR's members and network (collectively referred to as "members") comprise of the indigenous CHamoru, the residents of Guam, allies, and concerned citizens with the interest of protecting the beliefs, the culture, the language, the air, the water, and the land of the CHamoru.³ More specifically, PLSR's members comprise of Yo'ámte, fishermen, business people, college students, farmers, teachers, social workers, cultural practitioners, and environmentalists.

PLSR represents its members, in addition to 25,000 petition signatories, by actively engaging in the legislative, administrative processes and has consistently demonstrated a special interest in the areas of controversy. "Since its inception, PLSR has organized more than 450 different actions, including letter-writing campaigns, meetings with lawmakers, school visits, rallies, comment drives, protests, tours, press conferences, legislative roundtables, meetings with military officials, public hearings, election surveys, media interviews, podcasts, webinars, and other efforts to raise public awareness."⁴ Most recently, PLSR's advocacy efforts were recognized internationally: on March 30, 2021, the United Nations Human Rights Council acknowledged human rights violations by the U.S. military against the CHamoru people, as provided in PLSR's petition to United Nations.⁵

Accordingly, PLSR and its members have a direct interest in ensuring that federal actions and decisions do not harm or have a potential to harm cultural resources and historical properties of the indigenous CHamoru people. These interests extend to environmental resources that could constitute as a historic property, including sources of water and water bodies. DoD's environmental review in connection with actions and decisions that inadequately take into account the effect of an undertaking on cultural resources would impair PLSR's interests. As part of its environmental review, DoD's PA Memos—if deemed procedurally or substantively flawed—may further injure PLSR's interests. Thus, PLSR and its members have a significant interest in ensuring that (1) DoD fulfills its mandates under applicable federal laws and regulations to prevent the destruction or loss of cultural resources and historic properties; and (2) PLSR and its members have public "access to information and appropriate supporting documentation

² PA Memo at 1.

³ See Guam Exec. Order No. 98-28, Relative to Adopting "Inifresi", the Chamorro "Pledge of Allegiance" (1998), <http://governor.guam.gov/governor-content/uploads/2017/07/E.O.-98-28-Relative-to-Adopting-Inifresi-the-Chamorro-P.pdf>; *Guam Pledge: Inifresi*, GUAMPEDIA, <https://www.quampedia.com/guam-pledge-chamorro-inefresi/> (last visited April 10, 2021).

⁴ See Prutehi Litekyan: Save Ritidian's *Submission to Mr. Francisco Calí Tzay, Special Rapporteur on the rights of indigenous peoples, regarding ongoing human rights violations of the indigenous Chamorro people of Guam under U.S. colonization and militarization*, dated August 2020, at 20, <https://unpo.org/downloads/2694.pdf>.

⁵ See United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes Letter, dated March 30, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25885>.

regarding DoD's identification and evaluation efforts and findings, in order to provide the public opportunities to comment."⁶

2. BACKGROUND

A. Historic CHamoru Villages and its Loss Due to Military Impacts

(i) Historic CHamoru Villages of Måguak (Magua), Sabanan Fadang, Haputo, Pugua Point, Taguac, and Machanao

The indigenous CHamoru people settled in Guam, the southernmost and largest island in the Marianas archipelago, over 3,500 years ago.⁷ The CHamoru people of Guam were an organized cultural and linguistic society marked by advanced seafaring, horticulture, hunting, and fishing.⁸ By 800 A.D., CHamoru villages were characterized by unique latte structures, one-story houses resting on sizable limestone, basalt, or sandstone pillars and capstones.⁹ As indigenous Pacific Islanders, the historic CHamoru people developed a unique culture with a legacy of historical sites throughout Guam.¹⁰ These prehistoric and historic sites include the historic CHamoru villages of Måguak (Magua), Sabanan Fadang, Haputo, Pugua Point, Taguac, and Machanao.¹¹

In 1676, Spanish priests first recorded the historic village of Måguak (Magua) on a hand drawn map.¹² Before Spanish colonization and the time after that, the CHamoru people cared for the land.¹³ For example, Antonio Artero and several CHamoru families tended to the land and raised crops and livestock.¹⁴ "Due to the relative isolation on the remote uninhabited northwestern coast of Guam and later within the large Artero ranch, the CHamoru heritage resources of Måguak (Magua) village were essentially undisturbed until the end of World War II."¹⁵

⁶ 2011 PA Stipulation IV.E.2. at 9.

⁷ Taboroši, D., and J. W. Jenson. "[World War II artefacts and wartime use of caves in Guam, Mariana Islands.](#)" *Capra* 4 (2002): 1-8.

⁸ ROBERT F. ROGERS, *DESTINY'S LANDFALL: A HISTORY OF GUAM* 6-7, note 2 at 24 (1995). See also Doug Herman, *A Brief, 500-Year History of Guam*, SMITHSONIANMAG.COM (Aug. 15, 2017), <https://www.smithsonianmag.com/smithsonian-institution/brief-500-year-history-guam-180964508/>.

⁹ Anthony (T.J.) F. Quan, "*Respeta I Taotao Tano*": *The Recognition and Establishment of the Self Determination and Sovereign Rights of the Indigenous Chamorros of Guam under International, Federal, and Local Law*, 3 ASIAN-PAC. L. & POL'Y J. 56, 63 (2002).

¹⁰ Attached is a true and correct copy of an article by Dave Lotz, *The Saga of Magua Village*, 2020, at 1.

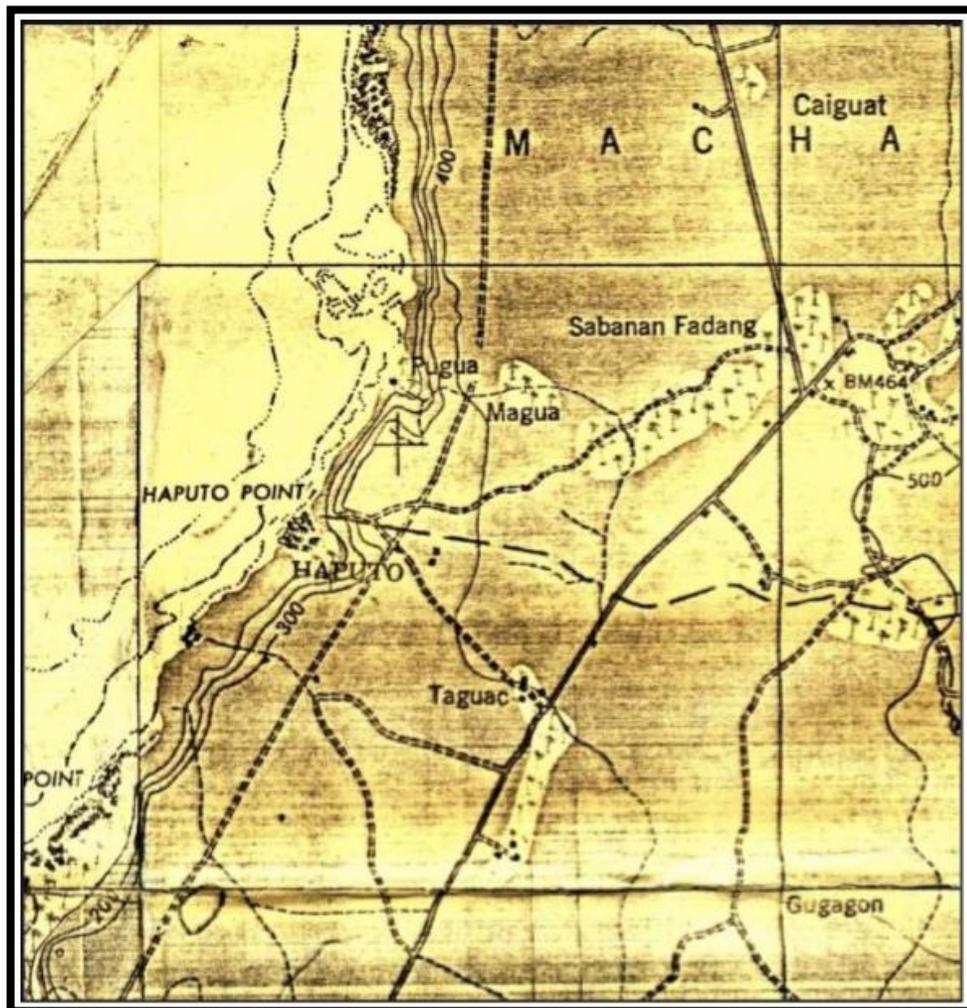
¹¹ *Id.* at 4.

¹² *Id.* at 1.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 4.



Map 1: 1944 map of a portion of Guam depicting historic villages of Sabanan Fadang, Måguak (Magua), and Taguac. DoD has already cleared project-specific areas located in the villages prior to public comment.

Source: DAVE LOTZ, *The Saga of Magua Village at 3* (2020) (citing Guam map, dated 1944, depicting Magua area).

(ii) Impacted Cultural Resources in the Villages of Måguak (Magua) and Sabanan Fadang

In 2018 and 2020, local news outlets reported that ancestral burial sites were discovered in the historic villages of Måguak (Magua) and Sabanan Fadang. In 2018, the DoD cleared remnants of the historic villages of Måguak (Magua).¹⁶ Human remains were recovered on the site, and historic CHamoru medicinal tools and artifacts such as “[p]ieces of lusong, mortars, and latte

¹⁶ Chloe Babuata, *Ancient village at military base not fully surveyed, more human remains may be undiscovered*, PACIFIC DAILY NEWS, (Nov. 27, 2018), <https://www.quampdn.com/story/news/2018/11/27/ancient-village-military-base-not-fully-surveyed-preservation-officer-says/1925172002/>.

stones[.]”¹⁷ At the time, Guam’s State Historic Preservation Office (SHPO) raised several concerns regarding the lack of proper surveying and the DoD’s failure to take into account all adverse effects on historic properties.¹⁸ In response to the displacement of historic human remains and the destruction of the historic village, PLSR organized a peaceful protest demonstration against the DoD’s bulldozing and removal of historic CHamoru historical properties.¹⁹ Despite indigenous and local opposition, the DoD continued to clear and construct on the historic village of Mâguak (Magua).²⁰

In 2020, the DoD disturbed and unearthed more human remains in the historic village.²¹ The disturbances included “a nearly intact skeleton with no skull present,” two skeletons buried together, and a skeleton of a juvenile.²² The displacement of human remains and burials led to community outcry.²³ PLSR and community leaders demanded the DoD to stop disturbing historic burial grounds and to halt construction.

In 2021, DoD revealed that there were “four burial [sites] associated with the Sabanan Fadang location[.]”²⁴ According to a 2020 DoD report, the four burials were inadvertently discovered during the construction of a project entitled “J-001B Utilities and Site Improvements, Finegayan RC 2014-0625.”²⁵ Within Project J-001B, DoD unearthed ancestral human bones, including cranium parts, an ulna, teeth, long bones, and femurs.²⁶ DoD proposes to construct smaller projects within Project J-001B, including those identified in this PA Memo.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Chloe Babuata, *Peaceful demonstration to protest military bulldozing ancient Chamoru village*, PACIFIC DAILY NEWS, (Oct. 31, 2018), <https://www.guampdn.com/story/news/2018/10/31/peaceful-demonstration-protest-military-bulldozing-ancient-village/1829904002/>.

²⁰ Anumita Kaur, *Marine base, live-fire training range halfway complete; 43 historic sites discovered*, PACIFIC DAILY NEWS, (Jul. 13, 2020), <https://www.guampdn.com/story/news/local/2020/07/12/military-buildup-guam-dededo-marine-base-training-range-near-completion/5422669002/>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Anumita Kaur, *Historic Preservation Office, military won't share information on more burials at Camp Blaz*, PACIFIC DAILY NEWS, (Mar. 3, 2021), <https://www.guampdn.com/story/news/local/2021/03/03/preservation-office-military-wont-share-information-more-burials/6858564002/> (quoting Capt. A.J. Ramos, communication strategy and operations officer, Marine Corps Base Camp Blaz).

²⁵ NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND, MILITARY RELOCATION PROGRAMMATIC AGREEMENT SEMI-ANNUAL REPORT JANUARY 1, 2020 – JUNE 30, 2020 4, 28, (2020) (“December 2020 Semi-Annual Report”), https://www.navfac.navy.mil/content/navfac/en/navfac_worldwide/pacific/about_us/cultural_resources/semi-annual-reports/_jcr_content/par1/pdfdownload_1374009525/file.res/FINAL%20Jan-Jun%202020%20PA%20Semi-Annual%20Report.pdf.

²⁶ *Id.*

B. Summary of Projects P-311, P-312, P-317, and P-804, and History

This PA Memo proposes to construct four discrete projects located in an area that the DoD had already “previously cleared” through Project J-001B, entitled “J-001B Utilities and Site Improvements (U&SI) ‘horizontal’ project.”²⁷ Below is a summary of the four proposed projects, which would impact a total of 27.2 acres:

- P-311: Central Fuel Station. Proposing to impact six (6) acres, DoD proposes to construct a gas station and administrative building. Construction includes paving the land, among others.
- P-312: Distribution Warehouse. DoD proposes to construct a warehouse for supplies. Construction includes paving the land. The project footprint is not clearly expressed since DoD sums both P-312 and P-804 as “14.5 acres”.²⁸
- P-317: Consolidated Explosives Ordnance Disposal (EOD) Compound. Proposing to impact 6.7 acres, DoD proposes to construct a low-rise EOD facility. Construction includes paving the land, among others.
- P-804: Central Issue Facility. DoD proposes to construct unit facilities and a Chemical Biological Radiological Nuclear Equipment storage area. The project footprint is not clearly expressed since DoD sums both P-312 and P-804 as “14.5 acres”.²⁹

The PA Memo vaguely mentions that the Projects were previously mitigated as part of “Project J-001B U&SI[.]”³⁰ Between 2014 and 2017, DoD provided at least five PA memos within the past seven years for project J-001B U&SI.³¹

None of the five prior PA memos for “J-001B U&SI” mention the Projects subject to this PA Memo. More importantly, none of the five prior PA memos discuss mitigation for the Projects relevant to this proposal. To the contrary, in 2019, P-311 central fuel station and P-804 central issue facility were part of a different memo, which included maps of the area of potential effect (“APE”).

²⁷ PA Memo at 1.

²⁸ PA Memo at 2 (“P-312/P-804 is 14.5 acres”).

²⁹ PA Memo at 2 (“P-312/P-804 is 14.5 acres”).

³⁰ PA Memo at 6.

³¹ All of the five programmatic agreement memos concerning Project J-001B U&SI are available on the NAVFAC CRI Website:

(1) Project: J-001B U&SI Mass Grub and Grade, Phase 1, dated April 17, 2014;

(2) Project: J-001B Finegayan U&SI Phase 1, dated August 22, 2014;

(3) Project: J-001B Finegayan U&SI Phase 1, dated October 2, 2014;

(4) Project: J-001B Finegayan U&SI Phase 1, dated December 9, 2014; and

(5) Project: J-001B Naval Base Guam Telecommunication Site (NBGTS) Finegayan U&SI (RC# 2016-0048) Phase IA, dated November 17, 2017,

https://www.navfac.navy.mil/navfac_worldwide/pacific/about_us/cultural_resources/previous-pa-memos-.html.

On July 8, 2019, NAVFAC issued a PA memo with area maps for P-311 and P-804, which appear smaller than the current project.³² It is unclear why DoD and NAVFAC do not mention the smaller APEs provided in the prior 2019 PA Memo for projects P-311 and P-804. It is also unclear why DoD and NAVFAC failed to mention the 2019 PA Memo.

C. PLSR Requests for Information from NAVFAC

DoD and NAVFAC's Cultural Resources Information website do not provide the public with the information or appropriate documentation for public review or public comment.³³ To better prepare for public comments, on April 14, 2021, PLSR emailed a request to NAVFAC for the literature and studies referenced in the PA Memos.³⁴ Specifically, PLSR requested the following relied upon literature and studies:³⁵

Athens, J.S.

2009 *Archaeological Surveys and Cultural Resources Studies on Guam and the Commonwealth of the Northern Mariana Islands in Support of the Joint Guam Build-Up Environmental Impact Statement Volume I: Guam*. Prepared for Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, Hawaii. International Archaeological Research Institute, Inc. Honolulu, Hawaii.

Church, M., J. Hokanson, J. Gallison, and M. Jennings

2009 *Cultural Resources Survey of 297 Acres at Andersen Air Force Base, Guam*. Prepared for Andersen Air Force Base, Guam. Engineering-Environmental Management, Inc., Englewood, Colorado.

Dixon, Boyd, S. Walker and R. Schaefer

2011 *Cultural Resource Investigations Conducted in the Territory of Guam Supporting the Joint Guam Build-Up Environmental Impact Statement: Final Archaeological Surveys on Guam 2008-2009 at Air Force Barrigada, Proposed Live Fire Training Range, Andersen South, and Naval Base Guam*. Prepared for Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, Hawaii. TEC Inc., Honolulu, Hawaii.

Dixon, B. and S. Walker

2011 *Cultural Resource Investigations Conducted in the Territory of Guam Supporting the Joint Guam Build-Up Environmental Impact Statement: Final Archaeological Surveys on*

³² NAVFAC PACIFIC, J-031, J-033, and P-459 bachelor Enlisted Quarters, P-311 Central Fuel Station, and P-804 Central Issue (July 8, 2019), https://www.navfac.navy.mil/content/navfac/en/navfac_worldwide/pacific/about_us/cultural_resources/previous-pa-memos-/jcr_content/par1/pdfdownload_833536286/file.res/J031_J033_%20P311_P459_P804%20Design%20and%20Construction%20PA%20Memo%20%231%20PUBLIC.pdf.

³³ See 2011 PA Stipulation IV.E.2. at 9 (requiring that information and appropriate documentation be provided on the CRI Website).

³⁴ Attached is a true and correct copy of an email communication from PLSR to JoAnna R.C. Delfin, NAVFAC, dated April 14, 2021 ("Attached PLSR email request").

³⁵ PA Memo at 4-5.

Guam 2009 at Proposed Utility Sites, Harmon Property, and Andersen AFB. Prepared for Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, Hawaii. TEC Inc., Honolulu, Hawaii.

Dixon, B., T. Rudolph, A. Jalandoni, I. Nelson, M. Hroncich-Conner, S. Leary, R. Schaefer, E. Lash, M. Todd
2015 Proposed Guam and CNMI Military Relocation 2012 Roadmap Adjustments SEIS Live-Fire Training Range Complex Footprints, Main Cantonment, Utilities, Communications, Well Field Alternatives and Access Route Options Volume I: Potential Direct Impact Area In-Fill Cultural Resources Study Narrative. Prepared for Naval Facilities Engineering Command Pacific, Pearl Harbor, Hawaii. Cardno TEC, Inc., Honolulu, Hawaii.

Dixon, B., T. McCurdy, R. Shaefer, R. Jones, I. Nelson
2016 Andersen Air Force Base, Guam, National Historic Preservation Act Section 110 Cultural Resources Identification and Evaluation Studies. Prepared for Naval Facilities Engineering Command Pacific, Pearl Harbor, Hawaii. Cardno TEC, Inc., Honolulu, Hawaii.

Dixon, B., D. Welch, T. Rudolph, R. Jones, and I. Nelson
2018 Final Technical Report: Archaeological Data Recovery in Support of the J-0001B Utilities and Site Improvements at Naval Base, Guam Telecommunications Site, Guam. Prepared for Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, Hawaii. TEC Inc. and the University of Guam. (GIS data labeled 2017)

Eakin, J., K. Higelmire and D. DeFant
2012 Archaeological Data Recovery Report Guam Military Relocation MILCON Projects P-100 (North Ramp Utilities) and P-101 (North Ramp Parking), Andersen Air Force Base, Territory of Guam. Prepared for Department of the Navy, Naval Facilities Engineering Command, Pacific, Pearl Harbor, Hawaii. Southeastern Archaeological Research, Inc. (SEARCH).

Haun, A.E.
1988 Archaeological Reconnaissance Survey and Field Inspections of Relocatable Over-the-Horizon Radar Sites on Guam, Mariana Islands, Micronesia. Prepared for Wilson Okimoto and Associates, Inc., Honolulu, Hawaii. Paul H. Rosendahl, PhD, Inc., Hilo, Hawaii.

Highness, D. and A. Haun
1990 Archaeological Inventory Survey DTS Facility: Barrigada and Finegayan Sites, Dededo and Barrigada Municipalities, Territory of Guam. Prepared for Belt, Collins, & Associates, Inc., Honolulu, Hawaii. Paul H. Rosendahl, PhD, Inc., Hilo, Hawaii.

Hokanson, Jeffrey H., J. David Kilby, Michael Church and Mary R. McCurdy
2008 Cultural Resources Survey for a Perimeter Fence and Portions of the Munitions Storage Area, Andersen Air Force Base, Guam. Prepared for Andersen Air Force Base. Engineering-environmental Management, Inc., Englewood, Colorado.

Kurashina, H., T. McGrath, and H. Manner
1987 Archaeological Survey of Areas 1, 2, 1-A and 2-A at Northwest Field, Andersen Air Force Base and Naval Communication Area Master Station Western Pacific, Finegayan, Guam, Marianas Islands. Prepared for Naval Facilities Engineering Command, Pacific, Pearl Harbor, Hawaii. Micronesian Area Research Center, University of Guam, Mangilao, Guam.

Pacheco, T., T. Rieth, and R. DiNapoli
2020 Archaeological Monitoring in Support of Finegayan Utilities and Site Improvements Phase I, Naval Computer and Telecommunications Station, Guam. 4 Volumes. Prepared for Department of the Navy, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii. International Archaeological Research Institute, Inc., Honolulu, Hawaii.

Welch, D.
2010 Archaeological Survey and Cultural Resource Studies Conducted in 2007 on the Island of Guam in Support of the Joint Guam Build-Up Environmental Impact Statement. 2 volumes. Prepared for Department of the Navy, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii. International Archaeological Research Institute, Inc., Honolulu, Hawaii.

As of the date of this letter, neither DoD nor NAVFAC disclosed the information to PLSR for public comment.

3. LEGAL STANDARDS

A. National Historic Preservation Act of 1966 and Implementing Regulations

A stated purpose of the National Historic Preservation Act of 1966 (“NHPA”), 54 U.S.C. §§ 300101-307108, is to “foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations[.]”³⁶ The NHPA states that the Federal government’s policy is to cooperate with organizations and individuals to “provide leadership in the *preservation of the historic property* of the United States and of the international community of nations[.]”³⁷

“Historic property” is statutorily defined as “any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object.”³⁸ The terms “preservation” or “historic preservation” includes “identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, and conservation[.]”³⁹

³⁶ 54 U.S.C. § 300101(1).

³⁷ *Id.* at § 300101(2) (emphasis added).

³⁸ *Id.* at § 300308.

³⁹ *Id.* at § 300315(1).

Before the approval of the expenditure of any Federal funds on the “undertaking,” Section 106 of the NHPA provides that the federal agency “shall take into account the effect of the undertaking on any historic property.”⁴⁰ This “take into account” requirement is often referred to as the “Section 106” process⁴¹ and is typically implemented through the “Protection of Historic Properties” regulations.⁴²

Generally, NHPA requires federal agencies to take into account the effect of their undertaking by complying with the following steps:

- consult with the SHPO to determine the area of potential effects, 36 C.F.R. § 800.4(a);
- make a reasonable and good faith effort to identify historic properties, 36 C.F.R. § 800.4(b);
- determine whether identified properties are eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4;
- determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); and
- avoid or mitigate any adverse effects, 36 C.F.R. §§ 800.8(e), 800.9(c).⁴³

Area of potential effects (“APE”) is defined as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.”⁴⁴

B. 2011 Programmatic Agreement

In the alternative, the regulations allow Federal agencies to develop other “Program Alternatives” to fulfill their Section 106 compliance responsibilities, such as a Programmatic Agreement (“PA”).⁴⁵ Because the regulations state that compliance with a PA fulfills an agency’s Section 106 responsibilities, courts analyze PAs to determine whether an agency’s action is compliant with its terms.⁴⁶ “Where an agency or a party violates a provision of an agreement substituting

⁴⁰ *Id.* at § 306108.

⁴¹ *Narragansett Indian Tribe by & Through Narragansett Indian Tribal Historic Pres. Office v. Nason*, CV 20-576 (RC), 2020 WL 4201633, at *1 (D.D.C. July 22, 2020).

⁴² 36 C.F.R. Part 800.

⁴³ *Wishtoyo Found. v. United States Fish & Wildlife Serv.*, CV 19-03322-CJC(ASX), 2020 WL 8409661, at *3 (C.D. Cal. Dec. 4, 2020) (citing *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999)).

⁴⁴ 36 C.F.R. § 800.16(d).

⁴⁵ *Id.* § 800.14.

⁴⁶ *See Dine Citizens Against Ruining Our Env’t v. Bernhardt*, 923 F.3d 831, 847 (10th Cir. 2019) (stating that the issue to resolve is whether agency violated requirements of a programmatic agreement); *Colo. River Indian Tribes v. Dep’t of Interior*, No. ED CV-1402504 JAK (SPx), 2015 WL 12661945, at *13 (C.D. Cal. June 11, 2015) (explaining that obligations under a programmatic agreement serve as a substitute to compliance with Section 106).

for Section 106, like the project PA in this case, the violation of the agreement can constitute a violation of the NHPA.”⁴⁷

In this case, the [2011 PA](#) governs the Section 106 responsibilities. Among others, the 2011 PA requires DoD to conduct supplementary consultations and initiate public involvement prior to construction. Supplementary consultation is triggered if a project changes within the undertaking. The 2011 PA provides:

should there be changes to the projects included within the Undertaking . . . that have potential effects on historic properties that have not been fully analyzed, *DoD will conduct supplementary consultations pursuant to the terms of this PA.*⁴⁸

Next, the 2011 PA Stipulations provide that the public must be given an opportunity to review and comment on a project before any ground-disturbing activity takes place.⁴⁹ The 2011 PA outlines the three-step process for public involvement:

- Step 1 – Initiate Public Comment Process: Provide PA Memos to the public for comment before authorizing “ground-disturbing activities or other actions with the potential to adversely affect historic properties.”⁵⁰
- Step 2 – Make documentation of findings available for public: “If DoD finds that either [1] no historic properties are present or [2] that historic properties are present but the project will have no adverse effect on those properties,” DoD will make the documentation of its findings available for public inspection prior to approving the project.⁵¹
- Step 3 – Maintain Records and provide information upon request: “DoD will maintain a record . . . and provide information on findings to the parties to the PA and the public upon request, consistent with the confidentiality provisions under Stipulation IV.E.2.b.”⁵²

Again, this three-step process must occur for “[a]ll projects” before approving “ground-disturbing activities or other actions with the potential to adversely affect historic properties.”⁵³

⁴⁷ *Battle Mountain Band of Te-Moak Tribe of W. Shoshone Indians v. United States Bureau of Land Mgmt.*, 302 F. Supp. 3d 1226, 1240 (D. Nev. 2018) (citing *Muckleshoot Indian Tribe v. United States Forest Serv.*, 177 F.3d 800, 807 (9th Cir. 1999)).

⁴⁸ 2011 PA at 1 (emphasis added).

⁴⁹ 2011 PA Stipulation V.B. at 13.

⁵⁰ 2011 PA Stipulation V.B.1. at 13.

⁵¹ 2011 PA Stipulation V.B.2. at 13-14.

⁵² 2011 PA Stipulation V.B.4. at 14.

⁵³ 2011 PA Stipulation V.B. at 13.

C. DoD and Navy Directives on Cultural Resources Management

The DoD and the Department of Navy (Navy) have respective directives on the maintenance and management of cultural resources.⁵⁴ The DoD directives impose several requirements for “All DoD operations [and] activities,”⁵⁵ including consultation requirements and making information publically available. For example, the directives state that the DoD “shall start consultation to explain the undertaking and work with stakeholders to define the area of potential effects, identify cultural resources, and determine potential effects to those resources.”⁵⁶

The DoD’s directive echoes the requirement for “Public Access” to Cultural Resource Information. For example, the DoD Directives require that the Head of the DoD Components:

f. Ensure that current information on known cultural resources is collected . . . to support informed decisions about the management of cultural resources. The Department of Defense *will ensure that this information is also available* (subject to the appropriate confidentiality and security considerations) to consulting parties, as well as residents, visitors, scholars, and the general public, to increase awareness of the significance of archaeological resources on DoD lands[.]

. . .

q. Maintain complete and current information on cultural items . . . *including those uncovered through inadvertent discovery or intentional excavation.*⁵⁷

In another example, the DoD must have a management plan that includes “Provisions for *sharing appropriate cultural resources information* with . . . nongovernmental organizations . . . and the general public[.]”⁵⁸ Making information available supports the Navy’s policy to “[e]ncourage effective and practical public participation in environmental decision-making that may affect public interests[.]”⁵⁹

⁵⁴ DoDI 4715.15, Cultural Resources Management (Aug. 31, 2018) (“DoDI 4715.15”) <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/471516p.pdf?ver=2017-11-21-114100-670>; and SECNAV INSTRUCTION 5090.8B (Oct. 18, 2018), <https://www.secnav.navy.mil/doni/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-00%20General%20Admin%20and%20Management%20Support/5090.8B.pdf>.

⁵⁵ [DoDI 4715.16](#) at 1.

⁵⁶ *Id.* Encl. 3 at 12.

⁵⁷ *Id.* Encl. 2 at 8-10.

⁵⁸ *Id.* Encl. 6 at 26.

⁵⁹ [SECNAVINST 5090.8B](#) at 3.

4. PLSR'S COMMENTS IN OPPOSITION TO THE PA MEMO'S IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

"Cultural resources are not renewable--once lost, they are lost forever."⁶⁰ And protecting "cultural resources is essential for tribes [and indigenous people] to continue their cultural identity, beliefs, ways of life, and to maintain their sovereignty."⁶¹ Accordingly, it is in the interest of PLSR to protect and preserve cultural resources from federal actions and decisions that are not in compliance with federal laws and regulations, including the 2011 PA.

A. In Violation of the 2011 PA, DoD is Allowing Ground-Disturbing Activities Before Providing Public Comment

Under the 2011 PA, DoD is expressly required to take public comments into account before authorizing "ground-disturbing activities or other actions with the potential to adversely affect historic properties"⁶² for "**All projects**["⁶³ There are no exceptions to the rule. As noted above in Section 3.B. of this letter, before any ground-disturbing activity may occur, the 2011 PA requires that DoD comply with a three-step process for identifying historic properties. The first step requires facilitating public involvement—provide PA Memos to the public for comment before authorizing "ground-disturbing activities or other actions with the potential to adversely affect historic properties."⁶⁴ Again, this process must occur for "All projects" before approving "ground-disturbing activities or other actions with the potential to adversely affect historic properties."⁶⁵

Here, PLSR is very concerned that DoD is not providing PA Memos prior to construction, and is shortcutting the take-into-account processes.⁶⁶ According to the PA Memo, DoD had already engaged in ground-disturbing activities within the project areas but under a separate project entitled Project J-001B U&SI.⁶⁷ The plain language of the 2011 PA and regulations make clear that DoD is simply not allowed under the Section 106 process to clear or disturb the ground in an area where historic properties may be located prior to public comment. The plain language does not make an exception for discrete project-specific areas located within a larger project area.

Although PA Memo vaguely mentions that the Projects were previously mitigated as part of "Project J-001B U&SI," none of the previous five PA memos for Project J-001B U&SI provided a

⁶⁰ Wesley James Furlong, *The Other Non-Renewable Resource: Cultural Resource Protection in a Changing Energy Future*, 42 PUB. LAND & RESOURCES L. REV. 1, 13-14 n.3 (2020) (discussing the importance of consulting with "Indigenous people and communities in the states and territories" so that federal agencies take into account the effects of their actions on cultural resources).

⁶¹ *Id.*

⁶² 2011 PA Stipulation V.B.1. at 13.

⁶³ 2011 PA Stipulation V.B. at 13 (emphasis added).

⁶⁴ 2011 PA Stipulation V.B.1. at 13.

⁶⁵ 2011 PA Stipulation V.B. at 13.

⁶⁶ *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803 (9th Cir. 2017) (holding that group had standing to pursue declaratory relief as to whether the DoD violated the NHPA by approving the construction of a military base in Okinawa, Japan).

⁶⁷ PA Memo at 1.

fair opportunity to comment on these “project-specific” APEs.⁶⁸ None of the five prior PA memos for Project J-001B U&SI mention the Projects proposed in this PA Memo. More importantly, none of the five prior PA memos discuss mitigation for this proposal. DoD is still required to involve the public by initiating the public comment process per the 2011 PA for project-specific areas.



Map 2: Before initiating public comment for projects P-311, P-312, P-317, and P-804, DoD had already cleared the project location “of vegetation” through a separate and larger project as shown in the pale-colored area that is surrounded by green vegetation. Source: PLSR’s Google Earth image screenshot of the clearing of Mâguak (Magua) and Haputo villages in March 2021.

Consequently, PLSR is concerned that DoD is evading proper review of discrete and specific projects by comingling them into a larger project area. The 2011 PA requires comments on the identification and evaluation of historic properties “*within project-specific APEs* for direct and indirect effects.”⁶⁹ However, the undertaking for these “project-specific” areas are already taking place, in contravene to the NHPA and 2011 PA.

Here, PLSR is commenting on four specific Projects after the fact construction activities have already cleared the historic villages of Mâguak (Magua) and Sabanan Fadang, among others. As a consequence, the public comment process is effectively meaningless if DoD can merely evade review by commingling discrete and specific project APEs after construction had taken place.

⁶⁸ PA Memo at 6.

⁶⁹ 2011 PA at IV.E.2. at 9 (emphasis added).

Deprivation of the opportunity to give fair public comments over the Projects injures PLSR's interests in preserving the natural and cultural resources over the project-specific areas.⁷⁰

B. The Lack of Publicly Accessible Information Necessary for Public Comment is Contrary to the 2011 PA

PLSR raises concerns regarding the lack of information available on the CRI Website necessary to support the DoD's PA Memo. Under the 2011 PA, DoD expressly agreed to use the CRI website so that supporting information can properly provide the public with "opportunities to comment."⁷¹ The 2011 PA expressly requires DoD to "utilize a publicly accessible Cultural Resources Information (CRI) website to *make information available to the public*["]⁷² Specifically, Stipulation IV.E.2. of the 2011 PA requires the DoD to include the following on its website:⁷³

- "[1] information and [2] appropriate supporting documentation" regarding DoD's identification and evaluation efforts and findings;⁷⁴
- supporting information on "study areas;"⁷⁵
- supporting information on "the scope of DoD identification efforts;"⁷⁶ and
- supporting information on "DoD's determinations of eligibility["]⁷⁷

DoD stipulates that disclosing information is necessary to "provide the public opportunities to comment."⁷⁸ However, the DoD's CRI Website fails to make the supporting materials cited in the PA Memo publicly accessible. Thus, PLSR raises concerns over that the lack of requisite information on the CRI Website, which consequently undermines the principles of public participation.

To better prepare for public comments, PLSR submitted a request to NAVFAC for the literature and studies referenced in the PA Memos.⁷⁹ Specifically, PLSR requested all of the PA Memo's references.⁸⁰ To date, PLSR has not received from DoD the requested information. Thus, PLSR is concerned that it could not provide meaningful comments had the information were readily accessible for inspection and public review.

⁷⁰ 2011 PA at IV.E.2. at 9 (emphasis added).

⁷¹ 2011 PA Stipulation IV.E.2. at 9.

⁷² *Id* (emphasis added).

⁷³ *Id*.

⁷⁴ *Id*.

⁷⁵ 2011 PA Stipulation IV.E.2.a. at 9.

⁷⁶ *Id*.

⁷⁷ *Id*.

⁷⁸ 2011 PA Stipulation IV.E.2. at 9.

⁷⁹ Attached PLSR email request.

⁸⁰ PA Memo at 4-5.

C. DoD's PA Memo is Arbitrary and Capricious

PLSR raises concerns that the “identification of historic properties” and “determination of [no] effects” provided in the PA Memo are arbitrary and capricious, not in accordance with law, and are not rationally or factually supported.

(i) DoD's Identification of Historic Properties is Incomplete

PLSR is concerned that the PA Memo's identification of historic properties was not conducted in a reasonable and good faith effort. NHPA regulations provide that an agency “shall make a reasonable and good faith effort to carry out appropriate identification efforts[.]”⁸¹ To that end, the agency must consult with the SHPO and the public to determine whether identified properties are eligible for listing on the National Register; and assess the effects of the undertaking on any eligible historic properties found.⁸²

PLSR raises three concerns over the PA Memo's identification efforts: (1) the PA Memo does not identify historic properties in all project locations; (2) the PA Memo is unclear if DoD completed surveys to identify properties within the project-specific APEs; and (3) the PA Memo is unclear if DoD evaluated the inadvertent discoveries for listing on the National Register of Historic Places.

First, the PA Memo only identifies historic properties in one project: P-311. However, that is not enough to show a good faith effort that DoD sought to identify historic properties in all project-specific APEs. It is important to note that PLSR is deprived of examining the scope of DoD's efforts because DoD has not yet released the literature it relies upon to identify historic properties, including surveys and studies.

Second, PLSR is concerned that the area for Project P-804 has not been surveyed. On Table E-2 of Appendix E, DoD does not include a survey reference as the row for Project P-804 only indicates “TBD.”⁸³ PLSR takes the position that the surveys for this area must be completed before further construction takes place.

Third, the PA Memo does not indicate if several inadvertent discoveries are eligible for listing on the National Register of Historic Place. Here, the PA Memo identified inadvertently discovered historic properties within Project P-311:

- “Human burials . . . which has subsequently been preserved in place;”
- Latte Period ceramic sherds, burnt soil with evidence of charcoal, burnt organic materials; and

⁸¹ 36 C.F.R. § 800.4(b)(1).

⁸² *WildEarth Guardians v. Provencio*, 923 F.3d 655, 676 (9th Cir. 2019); *See Montana Wilderness Ass'n v. Connell*, 725 F.3d 988, 1008 (9th Cir. 2013) (holding that a federal agency failed to make a reasonable and good faith effort to identify historical and cultural resources under the NHPA).

⁸³ 2011 Military Relocation Programmatic Agreement (PA) Appendix E Table 2: Naval Base Guam Projects, Section 106 Effect Determination and Affected Resources, dated Sept. 30, 2020, at 11, https://www.navfac.navy.mil/content/navfac/en/navfac_worldwide/pacific/about_us/cultural_resources/semi-annual-reports/_jcr_content/par1/pdfdownload_1858186286/file.res/FINAL%202011%20PA%20App%20E%20Jan-Jun%202020.pdf

- Evidence of pit features and hearths.⁸⁴

As noted above, the Section 106 process requires that DoD determine whether identified properties are eligible for listing on the National Register of Historic Places, based on criteria in 36 C.F.R. § 60.4.⁸⁵ The criteria for the National Register requires:

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) that are associated with the lives of persons significant in our past; or

(c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) that have yielded, or may be likely to yield, information important in prehistory or history.⁸⁶

However, cemeteries, structures that have been moved from their original locations, and properties primarily commemorative in nature “will qualify if they are integral parts of districts” that fall within the following categories:

(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

...

(f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance[.]⁸⁷

Here, the PA Memo is unclear about its “results of cultural resources review” such that the inadvertent discoveries were evaluated for listing on the National Register of Historic Places.⁸⁸ PLSR takes the position that the burial sites and the artifacts be nominated for listing.

⁸⁴ PA Memo at 5.

⁸⁵ 2011 PA Stipulation I.F. at 6. (citing National Register Criteria 36 C.F.R. pt. 60).

⁸⁶ 36 C.F.R. § 60.4.

⁸⁷ 36 C.F.R. § 60.4.

⁸⁸ 2011 PA Stipulation V.B.1.a. at 13.

(ii) DoD's Determination of No Effect Is Arbitrary and Capricious

PLSR is concerned that the PA Memo's determination of no effect is arbitrary and capricious, and shows that DoD did not adequately take into account the effects of its undertaking. An "agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"⁸⁹ "In a project with many moving pieces, as well as several stops and starts, the details of the base's construction and operation are susceptible to potential alteration and modification by the *take-into-account process*."⁹⁰ Courts are cautious of projects with "stops, starts, and modifications throughout its history."⁹¹ Accordingly, courts seek to avoid "shortcutting the process which has been committed in the first instance to the responsible federal agency."⁹²

Here, the PA Memo's determination of no effect is not rationally supported as it relies on mitigation efforts for the Project J-001B U&SI. As noted above, PLSR raises concerns that none of the five prior PA memos for Project J-001B U&SI discuss the specific projects in this PA Memo. Neither does the previous PA memos for Project J-001B U&SI analyze the "project-specific" APEs for direct and indirect effects.

Moreover, PLSR is concerned that Project J-001B's relevance to "utilities" has no bearing on the type of projects associated with this PA Memo. In the 2015 Record of Decision, mitigating "utilities" are triggered by wastewater and portable water projects.⁹³ Here, the purpose of the proposed Projects are not "utilities" by nature.

Although some of the Projects include minor stormwater elements, those minor parts do not change the Projects into "utilities." In other words, project-specific mitigation measures for "utilities" are not applicable here. To the extent that the determination of no effects for these project-specific areas relies upon mitigation measures intended for "utility" projects, that is improper. Thus, each area should have a separate determination of effect—both direct and indirect—applicable to each specific project.

Finally, PLSR raises concerns over the narrow scope of the determination of no effect. Here, it appears that the PA Memo only analyzes one out of four projects: "archaeological area partially located in the APE for P-311[.]"⁹⁴ The determination of effect is devoid of an analysis for the

⁸⁹ *Montana Wilderness Ass'n v. Connell*, 725 F.3d 988, 1011 (9th Cir. 2013) (citing to *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 56 (1983)).

⁹⁰ *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803 (9th Cir. 2017) (holding that group had standing to pursue declaratory relief as to whether the DoD violated the NHPA by approving the construction of a military base in Okinawa, Japan) (emphasis added).

⁹¹ *Ctr. for Biological Diversity*, 868 F.3d at 820.

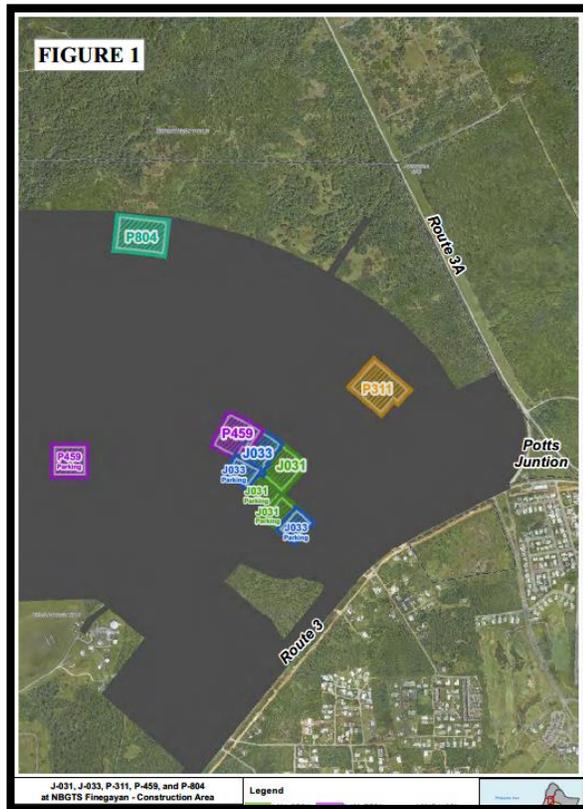
⁹² *Id.*

⁹³ Record of Decision for the Final Supplemental Environmental Impact Statement for Guam and Commonwealth of the Northern Mariana Islands Military Relocation, (2015) ("2015 ROD") at 19, <http://guammarines.s3.amazonaws.com/static/20150828%20-%20ROD%20with%20Signature%20-%20FINAL.pdf>.

⁹⁴ PA Memo at 6.

remaining Project areas. Thus, PLSR is concerned that DoD's determination is not rationally connected to the facts presented in the PA Memo, and is arbitrary and capricious.

D. Possible Illicit Expansion



2019 Figure 1 of [2019 PA Memo](#) at 6.



2021 Figure 1 of [2021 PA Memo](#) depicting expansion.

Finally, PLSR raises concerns over the possible expansion over P-804 and P-311. The PA Memo fails to mention that on July 8, 2019, NAVFAC issued a PA memo with area maps for P-311 and P-804, shown above, which appear smaller than the current Project proposal.⁹⁵ It is unclear why DoD and NAVFAC did not mention the smaller area shown in the prior 2019 PA Memo for projects P-311 and P-804.

To the extent that DoD is changing the size and scope of the project-specific areas, PLSR is concerned that supplementary consultation for those changes has not adequately taken place.

⁹⁵ NAVFAC PACIFIC, J-031, J-033, and P-459 bachelor Enlisted Quarters, P-311 Central Fuel Station, and P-804 Central Issue (July 8, 2019), https://www.navfac.navy.mil/content/navfac/en/navfac_worldwide/pacific/about_us/cultural_resources/previous-pa-memos-/jcr_content/par1/pdfdownload_833536286/file.res/J031_J033_%20P311_P459_P804%20Design%20and%20Construction%20PA%20Memo%20%231%20PUBLIC.pdf.

5. CONCLUSION

For the reasons provided above, we submit these comments for DoD to take into account before continuing to engage in improper ground-disturbing activities or actions that may adversely impact additional historic properties in the project area. We **oppose** the PA Memo's identification of historic properties and determination. Accordingly, we respectfully urge DoD to:

- Provide all supporting information regarding the "scope of DoD identification efforts, and DoD's determinations of eligibility," consistent with Stipulations IV.E.2.a. of the 2011 PA; and
- Reconsider its determination that "no historic properties will be affected by this expansion;"
- Revise the PA Memo's findings and determinations in compliance with the NHPA, and its implementing regulations;
- Reinitiate the public comment process in compliance with the 2011 PA, and
- Not to proceed with the proposals in light of the March 2021 United Nations Letter to the U.S. President and Commander-in-Chief Biden.⁹⁶

Sincerely,



Cheerful Catunao
Nossaman LLP

⁹⁶ The United Nations letter to U.S. President Biden requests that "**all necessary interim measures be taken to halt the alleged violations** and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations," (Mar. 31, 2021) (emphasis added), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25885>.

Attachments: DAVE LOTZ, The Saga of Magua Village (2020).

Email communication from PLSR to JoAnna R.C. Delfin, NAVFAC, dated April 14, 2021.

The Saga of Magua Village

June 25, 2020

Dave Lotz

Back in October of 2018, the discovery was made of the intentional destruction of Magua Village with the clearing for the Finegayan Cantonment for Marine Base Blaz at the current Naval Computer and Telecommunications Station (NCTS) Guam as a major component for the military buildup of the island. A review of this destruction of this significant feature of the CHamoru heritage of the Mariana Islands is important to learn how the military treats the cultural resources of the Mariana Islands, the applicability of the National Historic Preservation of Act of 1966, and the functions of the Guam Historic Preservation Officer.

Interior Upland CHamoru Habitation Sites in the Mariana Islands

The ancestors of the CHamorus of the islands settled centuries ago and developed a unique cultural that has left a legacy of habitation sites on most of the fifteen islands of the archipelago with most of the sites on the larger five southern islands. The focus of these sites is relative to sources of water and food both from the sea and land. A significant number of current sites are in coastal locations while numerous are known to be in interior locations primarily near permanent streams primarily in southern Guam in the Almagosa and Mepo areas.

Several CHamoru village sites have known to be located on the uplifted limestone plateaus of the southern islands. Unfortunately most no longer exist due to colonial programs of clearing for agriculture and military uses. Still in existence on Rota are Gampapa and Dugi, each with only a collection of only a few latte sets within the prior sugar cane plantations of the Japanese in the early 1900s, but devoid of the broader cultural landscape.

A mention of Magua is made on a 1676 map of Guahan by Father Alonso of the villages of Mahgua and Finahaguoyig along with the Spanish mission or chapel at nearby Ritidian. The Spanish conquest of the Mariana Islands in the 1600s and the later resultant *reduccion*, the destruction of the CHamoru population and concentration in only a few villages on Guam, left only a CHamoru village at Inapsan in northern Guam.

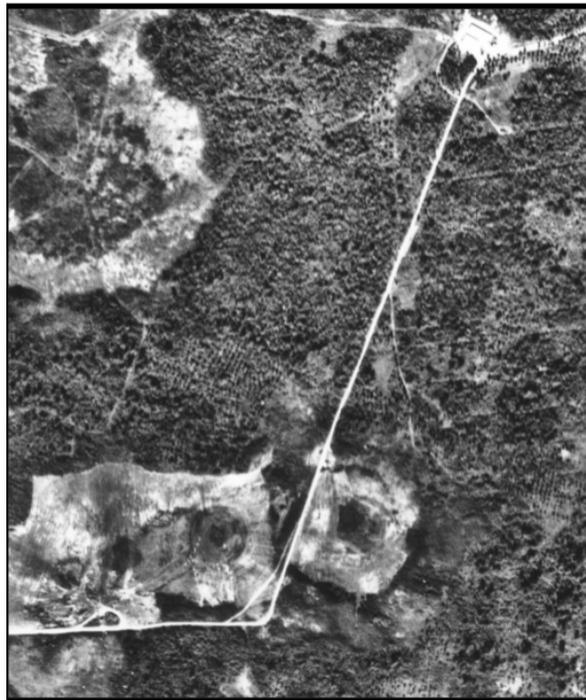


1944 map of Magua area

With the United States returning to Guam in July 1944 to seize the island from the Japanese, the Artero property at Pigua was confiscated to become a naval communications site, initially designated Naval Communications Station Guam and more recently U.S. Naval Computer and Telecommunications Station Guam. The initial radio facilities were located on the southern portion of the property on the plateau of Hilaan, labeled South Finegayan, and later moved north to the current location of Pigua in the 1950s. One of the primary naval uses of the location, now

labeled North Finegayan, starting in December 1944 was the Naval Security Group and continued until 1999. Most notable of their facilities at this location was the circular antenna array AN/FRD-10, Wullenweber, nicknamed the Elephant Cage.

Due to the relative isolation on the remote uninhabited northwestern coast of Guam and later within the large Artero ranch, the CHamoru heritage resources of Magua village were essentially undisturbed until the end of World War II. Of interest is that the CHamoru place name of Magua continued to be utilized at the correct location in a series of American maps. The establishment of U.S. Naval communication facilities certainly destroyed components of Magua, but the extent of destruction is unknown as there was no legal mandate to preserve and document until the passage of the National Historic Preservation Act of 1966 and even the laws impact was not know by the military on Guam for a period of time until the creation of the Guam State Historic Preservation Officer (SHPO) in the early 1970s. Much of Magua remained until the recent destruction for Marine Base Blaz and the required review under the NHPA resulted in identification of the vast cultural landscape of Magua that was subsequently destroyed.



1949 aerial photo with Magua in the center

For comparison, at the former naval housing area at South Finegayan there exists the South Finegayan Latte Stone Park comprised of one latte set. This is all that remains of certainly a similar CHamoru cultural landscape that was destroyed in the initial construction of the naval communication station in the 1940s and of the navy housing in the 1970s. An archaeological

reconnaissance report from 1972 noted adjacent occupation areas that had been disturbed by prior military construction and later clearing for the housing area.

While initially the latte were preserved in a small park, with the abandonment of the housing area by the Navy, the park has not been maintained.



Reconstructed from bottom aerial view.



NSG Guam Operations area comparison. Top 1950's - Bottom 1960's



South Finegayan latte site in 2019

Magua area is north of the DF antenna in the top photo and left of the road to the Wullenweber, just prior the road angling to the left.

U.S. Military Buildup of Guam

While Guam has been a location for the armed forces of the United States since acquiring the island from Spain in 1898 and especially since 1944 during World War II and into the Cold War, recent posturing in the Western Pacific by the United States has focused on increasing their military presence on the island. In 2002 the United States began discussions, policy changes, and implementation of the repositioning of U.S. forces to counter potential foes in this region of the world. In addition, there was expressed long term opposition to the U.S. military in Okinawa, a prefecture of Japan. As a result the reduction of U.S. Marine Corps personnel on Okinawa and their relocation to Guam was conceived that has resulted in the plans for a cantonment at NCTS, an aviation unit at Andersen Air Force Base, and training areas on the island, in addition to proposed training on the island of Tinian. Thus, after the U.S Marine Corps left Guam in 1998, their return commenced with the full implementation of the marines presence on Guam by 2024.

NEPA and NHPA

Under United States federal law, notably the National Historic Preservation Act of 1966 (NHPA) and the National Environmental Policy Act of 1969 (NEPA), federal agencies, which includes the Department of Defense, are required to evaluate the impacts on natural and cultural resources in making decisions. Both acts require public review and input. Without these laws of the United States, military construction of Guam would be done without the public's knowledge of the projects' scopes and impacts to the islands cultural and natural heritage.

The NEPA review for the military buildup of the primary components culminated in the *2010 Final Environment Impact Statement Guam and CNMI Military Relocation*. Focusing on the remnants of Magua Village, the cultural resources chapter summary simply listed it as site number 66-08-2304 with a habitation site/artifact scatter with the environmental consequences of the construction of the cantonment as "may adversely affect historic properties". The report missed several features and incredibly did not mention the natural sump with a grove of bamboo as a water source by failing to take a broader perspective of the cultural landscape where the sump served as a fresh water source for the inhabitants.

The review under the NHPA resulted in the *July 2010 Final Report Archaeological Surveys and Cultural Resources Studies Conducted in 2007 on the Island of Guam in Support of the Joint Guam Build-up Environmental Impact Statement*. This report stated that site 66-08-2303 is described as containing latte elements (haligi and tasa) and mortars and pestles (lusong and lommok) possible middens and portable artifacts at a habitation site surrounded by landforms conducive to cultivation and by quarried rock outcrops. There is evidence of disturbance with the prior moving of latte components, probably in the 1950s. No statement of Magua Village and its significance. 66-08-2303 was made relative to a determination of eligibility for the National Register of Historic Places (NRHP).

NHPA requires a review process termed the Section 106 review. For the military buildup this document evolved into the 2011 Programmatic Agreement (PA). Magua is not even mentioned by name in the PA. Rather, a statement is given that Project J-001B (Naval Base Guam Telecommunication Site Finegayan Utilities and Site improvements) will have "adverse effects on historic properties" without stating those effects. The PA was signed by the Guam SHPO on March 9, 2011. The Guam SHPO is mandated to preserve Guam's cultural resources and represent the people of Guam, but by signing the PA, the Guam SHPO effectively sanctioned the destruction of Magua village.

The PA does specify that Navy will survey, evaluate, and curate archaeological resources known and later discovered in the course of development of the base in consultation primarily with the Guam SHPO and in a more limited basis other parties that are signatures to the PA. Other PA requirements are for the production of public information booklets, a public access program,

nominations to the NRHP, funding for a Guam Cultural Repository, and an annual meeting to discuss the PA.

The map of the footprint of the cantonment clearly shows sufficient space at NCTS to amend the footprint for the project in avoid or minimize the destruction of Magua. However, this alternative to avoid destruction of Magua Village was apparently not discussed or documented in the NEPA and NHPA documents. Furthermore, no maps were ever provided for public review of the cultural resources in relation to the site development even though this was done for other resources.

The PA is supplemented by a require PA Memo #1 of August 22, 2014 that states “Historic Property 3 is a large previously bulldozed pre-Contact habitation site and artifact scatter” with no explanation that this site is Magua Village.

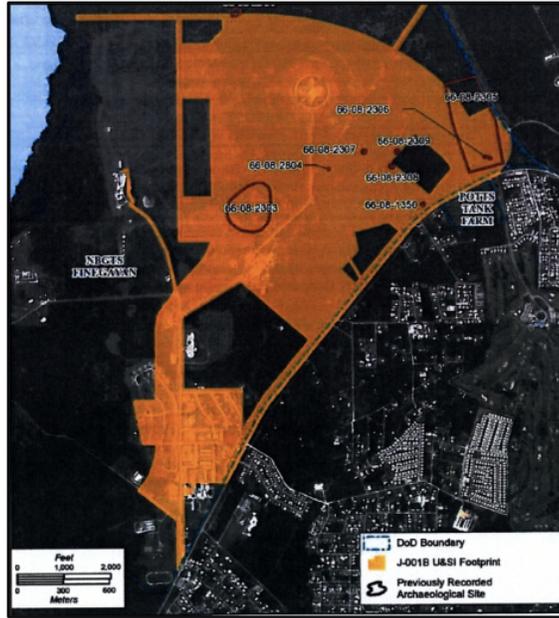
PA Memo #1 were an attempt to satisfy Section 800.2 (c)(5)(d) of the Advisory Council on Historic Regulations under NHPA for public involvement since “The views of the public are essential to inform Federal decisionmaking on the section 106 process” and “The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties...”. However the PA Memo process keeps the public distant from and prevents a meaningful serious discussion of historic preservation issues between the public and the Navy and Guam SHPO.

Furthermore, the Navy has relied on the Archaeological Resources Protection Act (ARPA) of 1979 and NHPA from revealing the location, resources, and significance of Magua, by stating in the PA Memo #1 of August 22, 2014, that ARPA and NHPA “prohibit federal agencies from publically disclosing the exact nature and location of archaeological sites and other types of historic properties such as traditional cultural properties (TCPs).” These cited laws are discretionary, but are being misused as a mandate and not an authorization, by the Navy to prevent the people of Guam from being aware of their cultural heritage sites being destroyed and incredibly from the CHamoru people of Guam from even knowing their own TCPs.

Regarding ARPA, in 16 U.S.C. 470hh, confidentiality of information states “may not be made available to the public,,,” which is not mandatory, but discretionary by a federal agency. In regards to NHPA, 543 U.S.C. 307103(a)(2) provides the authority for a Federal agency to withhold from disclosure to the public information about the location, character, or ownership of a historic property, if the Secretary (of Interior) and the agency determine that disclosure may risk harm to the historic property. This is not mandatory, but discretionary and requires that a legally established procedure be followed. No information has been provided by the Navy of seeking or obtaining the required authorization to withhold site information.

Destruction

With the Navy determining that the legal requirements have been fulfilled, construction began in 2018 of Project J-001B (Naval Base Guam Telecommunication Site Finegayan Utilities and Site improvements) with the contract awarded to Granite Construction Joint Venture consisting of Granite, of California, and Obayashi Corporation, of Japan, for \$165 million.



J-001B footprint with the core of Magua Village identified as “Previously Recorded Archaeology Site”.



Clearing of J-002B as of April 30, 2019

When clearing had begun the extent of the clearing and destruction of Magua was discovered and extensively covered by the Guam media beginning in late October 2018. Concurrently the Guam SHPO became noticeably involved in monitoring the destruction. New discoveries of cultural resources (labeled ‘inadvertent’), not previously documented in the 2010 report were made that included burials, latte, and pottery scatters. The Navy had removed for preservation lusong and latte stones to a site one mile to the south near the current entrance to NCTS.



Magua before clearing October 12, 2017



Magua site October 28, 2018

The Navy had further implemented data recovery in the extensive area being cleared that consisted of following work plans, archival research, mapping, shovel test pits, excavation and backhoe excavations, recordation, and removal of identified artifacts for later evaluation and storage. Eventually the recovered artifacts are to be cataloged and stored in bags and boxes for long term storage at the, to be constructed, Guam Cultural Repository at the University of Guam funded by the military buildup. The work plan and field work has been subject to Guam SHPO review, but no public involvement.

The massive clearing for the base sparing neither cultural or natural resources as apparently there was no consideration of working with the natural and cultural landscape to preserve or to be “green’ or ‘sustainable”, for the Marine Corps Blaz.

Thus the landscape of Magua Village has been completely destroyed for the establishment of Marine Base Blaz.

Subsequent Actions

The Guam Preservation Trust has engaged with the Navy in an attempt to memorialize, preserve, display, and interpret the salvaged artifacts from Magua Village. To date, no commitment has been made by the Navy.

According to the PA, annual PA workshops have been held on Guam. However attendance is limiting to those parties who have signed the PA. Those signatures would be as a “Concurring Party” with the obvious implication that the signatures agree with the document.

Regarding the additional requirement for the Navy to perform under the PA: Booklets have been produced by the Navy with distribution limited to the annual PA meetings and to the Guam SHPO office, but not for Magua Village.

The public access program was only implemented five years after the signature of the PA in 2011 and is considered a failure with minimal individuals using the program for access primarily due to the excessive bureaucracy requirements and uncertainty of actually having access. Large groups, such as Guam Boonie Stompers, are unable to participate because of the restrictions on numbers of participants and the requirement for all participants to travel to the Visitor Control Center at Naval Base Guam, which is only open during the week and not on weekends and evenings, in advance to register.

Nominations have begun to the NRHP of a few latte sites in the Naval Magazine and of isolated Chamoru habitation features at Andersen Air Force Base, but these are not of broad cultural landscapes. One nomination is of an inconsequential artifact, the conference table in which President Johnson met with South Vietnam leaders on Guam in 1967 during the Vietnam War at the then Commander Naval Forces Marianas Headquarters at Nimitz Hill. The nomination of the Torres Farmstead at Andersen Air Force Base has merit to preserve the remnants of an early

1900s CHamoru *lancho*. The nomination of the Tarague Well #4 is worthy from the perspective of northern Guam water resource development on land seized by the military.

The Guam Cultural Repository has been funded and a site designated at the University of Guam, but no construction has taken place as of early 2020. However, Guam acceptance of the Repository has sent the wrong message to the military that it is acceptable to destroy CHamoru cultural sites as long as the recovered artifacts are sent in bags and boxes to the Repository. Residents and the people of Guam will probably not visit the Repository, but do visit preserved latte sites as witnessed to the visitation to Pagat, the Valley of the Latte, and the Guam National Wildlife Refuge at Ritidan Point.

The annual PA meetings do take place with the limited participation as described.

Navy Myths About Magua

When the media and the public began to ask questions about the destruction of Magua Village, the Navy resorted to inaccurate and deceiving information about the site. With the initial moving of latte in the 1950s, still within Magua itself, the Navy attempted to portray the site as largely destroyed. The Navy further stated Magua was not a village, but only a habitation site without providing any rationale. They further attempted to state that Magua was not permanently inhabited as if that diminished the significance of the site. Interestingly enough, a review of professional archaeological literature regarding Guam provides a meteorology perspective that there was more rainfall 500 years ago as compared to today which destroys the credibility of such a non-permanent settlement based upon seasonal rains. The Navy did not answer inquiries as to who, why, and how they decided to destroy Magua Village when the cantonment could easily be redesigned to preserve Magua.

The Navy is so quick to provide an abundance of reports while ignoring the basic premise of historic preservation under the NHPA which is to just preserve history sites. After all, once destroyed, Magua village cannot be reestablished. Finally, the Navy is so inclined to hide behind the PA and cite the Guam SHPO for what they are doing, but of course the Navy has been the lead in this all along, not the Guam SHPO.

Guam SHPO Responsibilities

During the military buildup the Guam SHPO has been facing unprecedented challenges. Unfortunately the Governors under the buildup have been outspoken in favor of the buildup while seeming less supportive and lacking an understanding of cultural and historic preservation and the Section 106 process which is, or should be, the essence to insuring preservation under

NHPA. During the Calvo administration, the senior advisor to the governor, an attorney not functioning as an attorney and not having Section 106 background, took the lead in the PA formulation so the document was guided by political viewpoints and not preservation.

However, the Guam SHPO has several systemic problems that have become institutionalized over the years. There is a lack of applying the legal mandate contained in 21 GCA 76101 that declares "...to be the public policy and in the public interest of this territory to engage in a comprehensive program of historic preservation..." and goes on to further elaborate in the law on this policy statement. However Guam law cannot be viewed to support a program of sanctioned destruction of cultural resources which is too often the end result of the office's reviews as long as some semblance of archaeological efforts are made. While a case conceivably be made that information is obtained from salvage archaeology, the Guam SHPO has not had for decades any program of public education to the people of Guam that would somehow benefit from any knowledge acquired from reports in the Guam SHPO office.

The Guam SHPO would actually reduce their laborious work load by just insisting on preservation in place instead of archaeology destruction under a semblance of work plans. Reviews of work plans and field inspections by the Guam SHPO generate a time consuming work load.

Concurrently, there is noticeably a lack of any attempt for the office to engage the public to solicit any meaningful public input to strengthen their role in preserving the island's cultural heritage. This is probably driven by the office's portrayal that they are the owner of the culture resources as compared to being a steward with a public trust responsibility.

During this time of the military buildup, it became evident that not only the SHPO, but primarily executive leadership, had no concept on how to strategize and utilize posturing and tactics to deal with the U.S. military and lacked the leadership to seize the initiative, but in fact clearly played a subservient role deferring to the US military. A prime example of this is during the Camacho administration, the governor's office offered the Pagat site, an extensive CHamoru archaeological site listed on the NHRP, for the location of the live fire range. This proposal eventually resulted in a significant public outcry toward the military, with the then administration noticeably absent.

The Guam SHPO also appears to be too eager to accommodate the military while focusing on minute details while ignoring the broader preservation issues, such as preserving cultural landscapes.

Conclusions

The denial of information on Magua Village for public review in effect prevented meaningful public information, involvement, comments, and critique that could have made project changes to preserve the site. Consider that the site is within a military installation with restricted access and no visible evidence of the site from the on-base road, there is no justification for restricting information of the site, especially when solicitation of comments under a public review process. However the public review process was so designed by the Navy to prevent meaningful input, evaluation and discussion as the public had no assurances that the Navy would engage their concerns.

The Magua controversy reveals a fundamental difference between the US military and the people of Guam. The military as the legal property owner, only because of seizing the land under clouded legalities, takes the position that it is the military's decision of treatment of the cultural resources. The people of Guam feel that these cultural resources belong to them and that someday, when the military no longer needs Guam, they will be restored to their rightful possession.

In conclusion, with proper planning and communication seriously with the public especially history preservation advocates, Magua Village could of and should have been preserved and had the potential to demonstrate a Navy commitment to preserving and restoring a unique element of Guam's heritage, an upland interior latte period habitation site.

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Dave Lotz has extensive experience in managing cultural resources on Guam primarily with 15 years as Assistant Parks Administrator and Parks Administrator with the Department of Parks and Recreation, 5 years as Conservation Resources Chief at Andersen Air Force Base, and 4 years as Cultural Resources Program Manager with the War in the Pacific National Historical Park on Guam and American Memorial Park on Saipan. He initiated Guam's participation in the historic preservation program in 1974. He has served for over 8 years on the Guam Review Board for Historic Preservation and the Board for the Guam Preservation Trust. He has degrees in park management from Colorado State University and Michigan State University and has participated in numerous seminars on the Section 106 process and given presentations to the Marianas History Conference and Pacific History Conference.

Response to Comments Received

PA Memo #1: P-311 Central Fuel Station, P-312 Distribution Warehouse, P-317 Consolidated EOD Compound, and P-804 Central Issue

The Cultural Resources Information website was established in accordance with the Programmatic Agreement Among the Department of Defense, The Advisory Council on Historic Preservation, The Guam State Historic Preservation Officer, and The Commonwealth of the Northern Mariana Islands State Historic Preservation Officer Regarding the Military Relocation to the Islands of Guam and Tinian (2011 PA) for collecting public input regarding the identification and evaluation of historic properties, and to comment on DoD's identification and evaluation efforts and findings. The website is not intended to receive other types of concerns. Responses to comments received on the title projects are presented by relevant topic below.

Planning and Avoidance of Sites

During planning stages, the Department of Defense (DoD) first conducted a data gap analysis to determine the need for supplemental identification and evaluation surveys and then executed those efforts. The Area of Potential Effects (APE) for these vertical projects have been subject to one or more of the historic property identification efforts listed in 36 CFR §800.4(b)(1), which may include background research, consultation, oral history interviews, sample field investigation and field survey. The Section 106 process requires Federal agencies to take into account the effects of their undertakings on historic properties with the participation of the Guam State Historic Preservation Officer (SHPO) and other consulting and interested parties. The assessment of effects may prompt project modifications or the application of other conditions to avoid adverse effects to historic properties. Whenever possible, the DoD has incorporated re-designs.

Area of Potential Effects (APE)

The P-311, P-312, P-317, and P-804 vertical construction projects are located within the larger Marine Corps Base Camp Blaz (MCBCB) main cantonment project footprint also known as J-001B. The construction location previously underwent mitigation for the J-001B Utilities and Site Improvements (U&SI) "horizontal" project, as stipulated by the 2011 PA. The J-001B U&SI project consists of roads, drainage systems, water, wastewater, electrical, communications, security fencing, as well as earthwork activities such as vegetation clearance, grading, cutting/and filling. During this ongoing work, the Navy is conducting additional archaeological efforts consistent with the 2018 resolution agreement with Guam SHPO. Completion of clearing and grading work, and archaeological investigations will occur prior to vertical construction.

Preservation in Place

Archaeologists identified in-situ burials in the main cantonment APE through the J-001B mitigation efforts. The burials are not located in the APE for the subject vertical projects. The DoD will be permanently memorializing the burials in their original position and incorporate visitation into the Navy's public access plan.

Inadvertent Discoveries

Stipulation XI. of the 2011 Programmatic Agreement between Navy and the Guam SHPO, provides for a process in the event inadvertent discoveries are made. Construction is paused at the location of inadvertent discoveries and SHPO is notified with a plan of action within 48 hours. (Read the full [2011 PA](#) here).

Information Included in Programmatic Agreement Memoranda (PA Memos)

As a federal agency the Navy is required to uphold historic preservation laws, including confidentiality provisions that protect information on the nature and location of archaeological resources and historic properties. To ensure confidentiality provisions are adhered to, historic property information in the public PA Memos is presented in general terms. The Guam SHPO has a consultative role in the Section 106 process that reflects the interests of the citizens of Guam, and SHPO staff provide expertise on historic properties during consultation. In accordance with federal regulations, the SHPO is responsible for working with the DoD in taking into consideration historic properties at all level of planning and development.

Cultural Resources Information (CRI) Website

While confidentiality requirements prevents from publicly disclosing the exact nature and location of archaeological resources and historic properties, the CRI website makes other information available to the public. The website requests public input regarding the identification and evaluation of historic properties within project-specific APEs for direct and indirect effects. Additionally, the public has the opportunity to comment regarding DoD's identification and evaluation efforts and findings. Comments received are also displayed on the CRI website.