



Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

August 30, 2010

Mr. Joe Duenas
Director
Department of Parks and Recreation/
Historic Preservation Office
Hagatna, Guam

Ms. Lynda B. Aguon
Guam State Historic Preservation Officer
(Guam SHPO)
Guam Historic Resources Division
(State Historic Preservation Office)
Department of Parks and Recreation
Hagatna, Guam

Dear Mr. Duenas and Ms. Aguon,

I attended the meeting on Wednesday, August 25, 2010 with local officials and interested parties with the Department of Defense contractors and officials pushing for the signature of a Programmatic Agreement (PA) that will guide, if not approve the projects proposed in the Final Environmental Impact Statement (FEIS) on the military build up on Guam. I am most disturbed with the "hard push" to have the PA signed by local parties, most especially the State Historic Preservation Officer SHPO). This action gives "blessing" to the military's projects and its impact on historical properties and traditional cultural properties.

I am opposed to signing this PA in its present form, particularly before the general public has an opportunity to see the agreement and represent their views and comments.

In my limited review and exposure to this PA, it makes determinations of facts and issues related to the impact on historical properties with many factors that are still undetermined even in the FEIS, committing Guam agencies without the additional review or consultation.

This PA is clearly intended to satisfy the review and consultation required by Section 106 of the National Historic Preservation Act. I am deeply concerned that the PA and its invited and signatory parties, the Guam SHPO and government of Guam agencies such as the Department Chamorro Affairs, the Guam Museum and Guam Preservation Trust, will commit the government of Guam to an agreement with the Department of Defense (DOD) in which resources are lacking for the local agencies to properly monitor the activities.

Chairman
Committee on Appropriations,
Taxation, Banking, Insurance,
Retirement, and Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
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Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

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The PA has not been critically reviewed by policy makers and will have long-term impacts to the integrity of our cultural and historical sites.

I urge you to refrain from signing the PA until further consultation can be made with the people of Guam and additional negotiations on the terms and conditions of the PA can be re-negotiated based on the following:

1. DOD have stated that the effects on historic properties cannot be fully determined prior to approval of the Undertaking (the ROD) as stated in the PA. DOD **must stop** all pending projects pending full determination of the effects on these projects.
2. The signatories to the PA agree that DOD will satisfy its Section 106 responsibilities for the Undertaking according to the PA, and thus have effectuated a shortcut to Section 106 review, which allows the agency's decision to move forward without any more review or consultation for all the buildup projects, except Apra dredging and possibly Pagat, depending on the final version.

XVI. DURATION

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

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

3. Without the signature page, which shows the designated consulting parties, it is difficult to determine who (besides the government agencies invited) were consulted as to whether the affected properties are historically or culturally significant, the potential effects of the planned activities, or the negotiated mitigation. Section 106 requires consultation with those whose use of the cultural or historic property would be affected. When I asked the DOD officials who and how many people have commented on the PA, they could not assure me of the number of comments received, or the number of people consulted. It is very clear that interested community members who were aware of this process and applied to be consulting

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parties to the PA were rejected. If concerned community members were rejected, then who were accepted and did they even apply to be consulting parties?

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

4. In signing the PA, the government of Guam agencies will be acting (adopting determinations of effects, waiving Section 106 review for a negotiated process, and adopting tentative mitigation in exchange for the destruction of the sites) without public input and may not adequately represent the people who hold the properties historically or culturally significant on Guam.
5. Members of the public were not given reasonable opportunity to consult on the determination of effects, the negotiated process to replace the Section 106 process for all affected areas (DOD has acknowledged cumulative impacts on the entire islands of Guam and Tinian), or the appropriateness of the mitigation involved. The PA and the appendices, which outline the "agreed upon" effects has not been announced or provided to the public prior to this conclusion to the Section 106 review process. Similarly, the proposed mitigation if it is to be successful, should be something the community could agree to.
6. This PA purports to encompass all projects of the buildup, including new projects where effects are not yet determined. Section 106 review of any unnamed projects or non-studied projects should not be part of this agreement.
7. DOD has determined (and we agree) that there are historical and culturally significant properties that will be adversely affected by the planned projects. There is an appendix D to the PA which shows the specific known DOD projects covered by this PA and the agreed upon area of potential effect (APE) for each project. The effects of the proposed actions on these properties is also indicated, with some determined or agreed to bear "no adverse effect". All of these determinations lack public input and if the PA is executed will constitute agreement on behalf of the Guam SHPO and Guam agencies (signatories).

The inclusion of Appendix D, which establishes the archeological sites in the PA is inappropriate. The PA should serve as a guide to the implementation of the Section 106 process for the determination of historical and archeological significant sites, not a determination sites. Appendix D must be removed from the PA agreement.

8. This PA specifies an insufficient comment time for the Guam SHPO of thirty (30) days, in most instances, including for the determination of effects of entirely undisclosed new projects. Thirty (30) days is especially insufficient in light of the magnitude and complexity of the Undertaking and the already predicted adverse effects. Less than thirty (30) days for "invited" government of Guam agency comments and consulting party comments, and no requirement for public comment are likewise insufficient.
9. The process outlined in the PA for resolution of disputes leaves little room for consultation with outside parties and no ability for the SHPO to put a hold on projects where her concerns are not addressed.
10. If the SHPO approves a data recovery plan for one archaeological site, DOD may use this for subsequent projects, without further consultation with SHPO or any other party.
11. There is a dichotomy in the way DOD will treat material found on DOD vs. non-DOD lands.
12. DOD admits the proposed plans will have specific adverse effects and cumulative effects to the entire island of Guam. **The planned mitigation is inadequate** in light of the cultural and historic properties to be destroyed, moved, or removed from access and the cumulative effects to the entire island of these proposed actions. We caution that the mitigation being negotiated by the PA, everyone on Guam potentially to the detriment of future generations and without public input, is not quantifiable or definite, and may even be illusory. At a minimum, it does not equate with the potential harm to the public to preclude them from further consultation.

(a) Proposed mitigation is for DOD to request \$5M from Congress for a Guam Museum and to share the studies done in accordance with the PA. USDA estimates were at \$25M for the same building, not counting cataloging and curation costs, and not counting the value of future study or enjoyment of those sites. A promise to request \$5 Million from Congress to go towards a Guam Museum and Cultural Center is nothing new compared to what they have been promising all along to ask Congress to do for Guam, and in no way amounts to real cash. The amount falls far short of the \$25Million estimated necessary by the USDA, and does not compare to the cultural value of the intact sites as resources that will be lost to Chamorros as a result of this undertaking.

(b) DOD access 'plans' will be created, subject to military operational requirements, current DOD and installation security instructions and other guidelines, and anti-terrorist /force protection security conditions. This sounds like the status quo

or something the bases have had the ability to effectuate for many years. The DOD has failed to recognize that denial of access is an adverse effect and does nothing to address this fact in a plan that is acceptable.

(c) Where highly forested areas will be impacted, the mitigation proposed is to provide an opportunity for traditional artisans to collect the forest resources.

(d) For properties in NCTS Finegayan deemed strictly archaeological historic properties, the mitigation will be 'Data recovery excavations'.

(e) To preserve and protect South Finegayan Naval Housing Latte Stone Park (Site 6608-0811), informational signage will be placed within the existing interpretive kiosk located near the site.

(f) Access to Mount Lamlam and Mount Jumulong Manglo will be restricted entirely for one week per month, and will be subject to access plan for other times. However, the DOD promises to allow access every Friday and when not being used for training. This plan is akin to limiting access to the Gettysburg National Cemetery by the general public to the three days of battle, July 1-3.

(g) DOD will mitigate the adverse effects such as increase in population or visitation in areas where historic properties are located by annual informational briefings for all DOD personnel, their families, and contractors. Annual briefings may not lessen any physical impact to the sites nor will it facilitate the Chamorro people's use of the cultural sites.

(h) DOD will submit one nomination per year to the national registry of Historic Places for historic properties on DOD lands, solely at the discretion of DOD as to which property.

(i) DoD will *request* Congress to increase funding to Guam SHPO.

(j) The promise to provide data to SHPO towards the updating of the Guam Historic Preservation Plan is a good idea and should be incorporated into the military's plans. However, without the PA would SHPO not be privy to this data?

13. The PA approves as part of the military expansion the proposed realignment of Route 15 and invites Federal Highway to be a signatory and for the purposes of addressing the Section 106 responsibilities for that project. This essentially carves out Pagat for the firing range without any further approval needed. The FEIS is clear that the only purpose of realigning Route 15 is to allow for the development of a firing range in Pagat.

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We believe that with further consultation with the people of Guam, productive results are possible in the Section 106 process, but not if the PA is executed under these conditions. We realize your office is bearing a disproportionate amount of work as a result of the military buildup, FHWA projects and private development, pursuant to corresponding federal and local review and preservation requirements.

As Chairman on the Committee on Appropriations, during recent (FY2011) budget deliberations, we tried to allocate additional resources to your office and will continue to pursue contribution(s) from Congress for the increased demand for historic preservation work by your office and other agencies of the government of Guam.

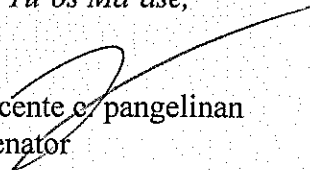
We are willing to assist you in your consideration of this PA by conducting a public hearing on September 15 on the proposed PA and the list of properties affected and not affected, and especially on the proposed mitigation. By that time, if the ROD has been entered, we will have the concrete proposals of the military in regards to mitigation of the adverse effects of the buildup pursuant to NEPA. We will await further indication from you whether you prefer to consult the public by other means.

There is no law or regulation that mandates that a PA must be signed before the ROD is approved and signed for projects governed by the NEPA process and thus any incentives being presented to entice a signature at this point in time is another attempt by DOD as "bait and switch". The people of Guam as represented by your office must not fall for this a second time.

This PA if signed in its present form, will become a problematic agreement for the people of Guam as we struggle to preserve and protect our historical resources and its impact on the survival of our Chamorro culture.

Thank you for your continued work to preserve Guam's cultural and historic properties.

Si Yu'os Ma'ase,


vicente c. pangelinan
Senator

cc: Governor Felix Camacho
Lt. Governor Mike Cruz