

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Resolution No. -35 (COR)

Introduced by:

Telena Cruz Nelson
Therese M. Terlaje 
Sabina Flores Perez 
Amanda L. Shelton 
Joe S. San Agustin
Kelly Marsh (Taitano) 
Clynton E. Ridgell 
Tina Rose Muña Barnes 
Régine Biscoe Lee
Jose "Pedro" Terlaje
Telo Taitague 
William M. Castro 
Louise Borja Muna 
James C. Moylan
Mary Camacho Torres

Relative to urging for the support of Governor Lourdes Leon Guerrero to call for a halt to clearing, pre-construction, data recovery and construction activities related to the U.S. Department of the Navy's proposed Live-Fire Training Range Complex at Northwest Field or Tailalo, adjacent to Litekyan in order to ensure the protection of the environment and historic and cultural resources of the northern coastline of Guam.

1 **BE IT RESOLVED BY THE COMMITTEE ON RULES OF *I***
2 ***MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN:***

1 **WHEREAS**, Guam's Programmatic Agreement (PA) regarding the military
2 relocation to the islands of Guam and Tinian was established in 2011 between Guam
3 State Historic Preservation Office (GSHPO), CNMI State Historic Preservation Office
4 (CSHPO) and the U.S. Department of Defense (DoD). The (PA) is a contract that
5 demands the parties (SHPO and DoD) to comply with a process that includes
6 consultation, review and compliance concerning historic preservation laws and outlines
7 environmental responsibilities of the military concerning the impacts of training
8 activities on Guam. The review process includes initiating the process, identifying
9 historic properties, assessing adverse effects, resolving adverse effects and then
10 proceeding. Development of a (PA) includes consultation with Guam State Historic
11 Preservation Office, CNMI State Historic Preservation Office, Advisory Council on
12 Historic Preservation (ACHP), invited signatories, concurring parties and the public,
13 but negotiations for what actually goes in the agreement are solely between State
14 Historic Preservation Offices (SHPO) and U.S. (DoD). The (PA) is a tool for
15 accountability through procedures, impacts and mitigation; and

16 **WHEREAS**, the Programmatic Agreement was put in place to primarily uphold
17 the National Historic Preservation Act (NHPA) which is a law that gives Guam the right
18 to preserve historic properties that reflect historic heritage, are cultural foundations as a
19 living part of community life and development, are the legacy of irreplaceable cultural,
20 educational, inspirational, economic, and energy benefits, and provide increased
21 knowledge of historic resources. Section 106 of the (NHPA) demonstrates that before
22 the approval of Federal funds for any project, the Federal agency that has direct or
23 indirect jurisdiction over a proposed site has to take into account the effects on such
24 district or site to meet the requirements of the National Environmental Policy Act
25 (NEPA); and

1 **WHEREAS**, the (NEPA) is a law that protects the environment and requires
2 agencies to first conduct scoping, identification, assessment, and consultation to assess
3 potential environmental impacts on current pending or future projects and activities of
4 the military. NEPA's process match with the Programmatic Agreement process and
5 both must be done in order for the military to proceed in their proposed testing and
6 training activities. A draft of an environmental impact statements (EIS) is to be made
7 available to the public and a final environmental impact statement (FEIS) is to be issued
8 shortly after; and

9 **WHEREAS**, on September 20, 2010, the U.S. Department of the Navy (DON or
10 Navy) issued its Record of Decision (2010 ROD) based on the Final Environmental
11 Impact Study (FEIS) issued earlier that year, pursuant to which the (DoD) would
12 relocate approximately eight thousand six hundred (8,600) Marines from Okinawa to
13 Guam and, as part of that process, construct and operate a series of live-fire training
14 ranges not only in Guam but throughout the Marianas; and

15 **WHEREAS**, in 2011, the PA was entered into by the GSHPO on behalf of Guam
16 as part of consultation pursuant to NHPA; and

17 **WHEREAS**, shortly after the release of the ROD (Record of Decision), the Navy
18 reassessed the nature of the need for said live-fire training ranges, culminating in the
19 release in 2015 of a Supplemental Environmental Impact Statement (SEIS), evaluating
20 alternate locations for the development of a live-fire training range complex on Guam,
21 a decision the Navy had differed in 2010; and

22 **WHEREAS**, the Navy stated it would analyze the impacts of the relocated
23 Marines' live-fire training ranges on Tinian and Pagan in an entirely separate EIS,
24 namely the (CNMI) Joint Military Training Environmental Impact Statement (CJMT
25 EIS) which allows the public to participate in the NEPA process in order for the military
26 to prepare and EIS – a draft of which was issued in April 2015. The impacts and

1 mitigation of the CJMT EIS allow for adverse effects on proposed military training
2 areas, but ensure the accountability of the military to go through the NEPA and PA
3 processes in order to track the damages to these areas; and

4 **WHEREAS**, according to a publication prepared by National Lieutenant
5 Governors Association for 2014-2015, “Through collaboration with then - Secretary of
6 the Navy Robert Work, the Four Pillars of the military buildup was established: (1) the
7 “One Guam” initiative which commits DoD to improving the quality of life for the
8 people of Guam and the military personnel who call Guam home; (2) the “Green Guam”
9 initiative which establishes that DoD is committed to developing the most energy
10 efficient infrastructure possible and supporting Guam’s efforts to develop sustainable
11 and renewable energy projects; (3) commitment to providing 24 hours /seven days a
12 week unimpeded access to historical sites and sacred lands by civilians; and (4) pursue
13 a Net-Negative strategy for DoD-owned land where they are committed better utilizing
14 land and ultimately to having a smaller footprint on Guam after the Military Buildup
15 than they currently hold;” and

16 **WHEREAS**, in August 2015, the Navy issued another Record of Decision (2015
17 ROD) based on the SEIS. This second ROD reaffirmed the Navy’s 2010 decision to
18 relocate Marines from Okinawa to the Marianas despite the lack of analysis of the live-
19 fire training ranges on Tinian and Pagan and announced their decision to build the live
20 fire training range on Guam adjacent to Litekyan at Northwest Field, Anderson Air
21 Force Base (AAFB) or Taila’lo ; and

22 **WHEREAS**, in February 2016, the Navy announced its plan to issue a revised
23 draft CJMT EIS, which has yet to be released;

24 **WHEREAS**, on July 27, 2016, Earthjustice, representing concerned citizens
25 groups in the CNMI, filed a lawsuit under the National Environmental Policy Act
26 (NEPA) in the United States District Court for the Northern Mariana Islands alleging

1 the proposed live-fire training ranges in Guam and the CNMI were “cumulative and
2 connected actions” under NEPA, which should have been considered under a single
3 EIS, and that the Navy had desecrated the area, destroyed native forests and coral reefs,
4 and neglected to consider alternative locations outside the Mariana Islands for their
5 firing range training sites in compliance with federal law. The lawsuit has not yet been
6 resolved; and

7 **WHEREAS**, in 2017 a Draft Technical Report prepared by DoD’s Utilities and
8 Site Improvements, USMC Cantonment Area, Finegayan, Supplemental
9 Archaeological Investigations for Archaeological Data Recovery in support of
10 construction for MILCON P-715 Live Fire Training Range Complex at AAFB was
11 reviewed by State Archaeologist of Guam, John Mark Joseph, concerning the quality
12 of the review of the report. On July 25, 2017, John Mark Joseph informed Naval
13 Facilities Engineering Command (NAVFAC Pacific) of concerns within the report
14 including lack of site definitions in the field, arbitrary boundaries, insufficient
15 information for clustering of artifacts or features, and revised maps lacked identification
16 and evaluation. In August 2017 GSHPO confirmed the inconsistencies and pursued an
17 extension for the review of the Draft Technical Report; and

18 **WHEREAS**, on September, 26, 2017 GSHPO confirmed the Draft Technical
19 Report included inadequate background research, quality control of reports made for
20 inefficient reviews, maps for potential effect from two sources did not match, agreed
21 upon mitigation measure was changed when found that a site that was to be preserved
22 was actually excavated causing destruction, subsurface testing was not considered, and
23 sites were insufficiently identified, evaluated or data recovered and therefore did not
24 show a full depiction of what they may truly represent as far as landscape, settlement and
25 cultural practices. Guam State Historic Preservation Office informed the (ACHP) that
26 prior to the signing of the ROD (Record of Decision) in 2015, projects on historic

1 properties have not been thoroughly considered in projecting full effects on the land and
2 requested a reevaluation; and

3 **WHEREAS**, on October 13, 2017, the (ACHP) advised GSHPO to refer back to
4 the (NEPA) and PA process on solving disputes. On December 22, 2017, Department
5 of the U.S. Navy granted a forty-five (45) day extension inclusive of the time and days
6 to request a reevaluation, which totaled a ninety (90) day extension for the Draft
7 Technical Report; and

8 **WHEREAS**, in May 2018 Guam SHPO invoked Stipulation XIII of the PA,
9 objecting to the archaeological surveys used by the Department of the Navy (DON) for
10 the Live Fire Training Range Complex (LFTRC) site, the Main Cantonment area in
11 Finegayan South Andersen, and the Water Well Development Construction Areas.
12 There was some resolution between the SHPO and DON regarding this objection, but
13 more concerns were raised by the Guam SHPO at the 7th Annual PA Workshop
14 meetings that still need to be resolved; and

15 **WHEREAS**, in August 2018, despite Guam Legislative's passage of Resolution
16 228-34 in 2018 to pause development and construction on the firing range complex at
17 Northwest Field, DoD had initiated their activities, according to an a August 13, 2018
18 Stars and Stripes article, which stated, "Construction on the known distance ranges and
19 live-fire training range complex has just begun. The \$78 million project — scheduled
20 to be completed in fall of 2020 — will include four ranges and some support facilities."
21 The five live fire training ranges are to be built near Guam's primary resource for
22 drinking water, the Northern Lens Aquifer, and could cause irreversible contamination;
23 and

24 **WHEREAS**, in late May and early June 2019 a new site was discovered with
25 Latte-period artifacts at the live fire training range's future site at Northwest Field.
26 Shortly after the first discovery three sites with more findings were uncovered during

1 the clearing of vegetation at the Known Distance Rifle Range (KDRR) where 400 pieces
2 of latte-period ceramic pottery were found in one dense area, earth ovens, various stone,
3 shell artifacts in two other areas, and lusong or mortar and pestle and ceramic scatters
4 were found on a roadway adjacent to KDRR; and

5 **WHEREAS**, the four new discoveries of historic properties are in addition to the
6 ninety-four (94) other known historic sites at the proposed LFTRC site. Fourteen
7 known historic sites have already been completely removed (via “data recovery”).
8 “Data recovery” as written in the PA is the removal of only a sampling of
9 archaeologically relevant material (i.e. latte, lusong, earth ovens, pottery pieces, etc.)
10 and any remaining artifacts at the site are left to the discretion of the contractor to
11 dispose (see Appendix A 1); and

12 **WHEREAS**, at the Main Cantonment area at Finegayan at the site commonly
13 known as Magua, three additional new discoveries were made in May and June 2019.
14 A portion of Magua was already cleared of latte and lusong in October 2018, despite
15 requests from the GSHPO and Guam Preservation Trust to establish an interpretive site
16 in place to protect the artifacts found; and

17 **WHEREAS**, the largest of the five firing ranges at the proposed LFTR site is the
18 59-acre Multipurpose Machine Gun (MPMG) Range closest to the endangered
19 *Serianthes Nelsonii* tree and is slated to be cleared next, which may result insignificant
20 harm to that tree and others, along with other species, and additional significant
21 inadvertent discoveries of historic properties; and

22 **WHEREAS**, the July 2017 Biological Opinion issued by the U.S. Fish and
23 Wildlife Service discusses the clearing of a total of 1,219 acres of limestone forest
24 habitat, including the clearing of 187 acres of limestone forest habitat at Northwest
25 Field, the clearing of 212 acres of limestone forest habitat for the hand grenade range,
26 urban terrain training area and other activities at Andersen South, the clearing of 12

1 acres of limestone forest habitat for well fields and water system at Andersen Air Force
2 Base, and the 683 acres of limestone forest for cantonment at Finegayan. In the past
3 the U.S. military has brought destructive invasive species such as the brown tree snake,
4 which have endangered and caused extinction of the majority of our native wildlife
5 animals and plants. The U.S. military has been on land and property that cultivate native
6 plant and animal habitats, which DoD claims to preserve and protect, while at the same
7 time conducting environmentally destructive training and testing on and around those
8 same habitats (see appendix B 1); and

9 **WHEREAS**, the *Serianthes nelsonii* or hayun lagu tree, the only reproductive
10 tree on Guam, along with *Pteropus mariannus mariannus* (Mariana fruit bat or *fanihi*),
11 *Hypolimnas octocula marianensis* (Mariana eight-spot butterfly or *ababbang*),
12 *Tabernaemontana rotensis*, *Heritiera longipetiolata* (*ufa halumtanu*), and *Cycas*
13 *micronesica* (*fadang*) are all threatened, endangered, or critically endangered species
14 mostly incorporated in DoD controlled properties. The limestone forest provides a
15 habitat that is vital to the survival of all these species especially the *Serianthes Nelsonni*
16 tree, which is the last of its kind. Else Demeulenarere, Associate Director of the Center
17 for Island Sustainability and Biologist stated, “A hundred (100) feet buffer is not enough
18 to sustain a healthy *Serianthes* population surrounded by a healthy forest. The current
19 tree and the seedlings should be preserved as a viable *Serianthes* population, because
20 the seedlings thrive in the current exclosure.” The seedlings of the *Serianthes* tree are
21 found under the tree and should not be uprooted or replanted, but be allowed to thrive
22 in its natural habitat where its currently stands (see Appendix B 1 and Appendix B 2);
23 and

24 **WHEREAS**, the limestone forest provides an even larger forested area serving
25 as habitat for eleven endangered species: *Pteropus mariannus mariannus* (Mariana fruit
26 bat or *fanihi*), *Hypolimnas octocula marianensis* (Mariana eight-spot butterfly or

1 *ababbang*), *Bulbophyllum guamense* (*siboyas halumtanu*), *Dendrobium guamense*,
2 *Tuberolabium guamense*, *Cycas micronesica* (*fadang*), *Heritiera longipetiolata* (*ufa*
3 *halumtanu*), and *Tabernaemontana rotensis*, *Partula radiolata* (Guam tree snail or
4 *akaleha*), *Samoana fragilis* (fragile tree snail or *akaleha dogas*), and *Partula gibba*
5 (humped tree snail or *akaleha*). In total, approximately 78 acres (32 ha) of primary
6 limestone forest and 109 ac (44 ha) of secondary limestone forest would be permanently
7 cleared for construction of the live fire training range complex (LFTRC); and

8 **WHEREAS**, the Endangered Species Act requires a Biological Opinion when
9 endangered and/or threatened species may be adversely impacted by federal actions.
10 Furthermore, the Biological Opinion may be re-initiated “where discretionary federal
11 involvement or control over the action has been retained or is authorized by law and:
12 (a) If the amount or extent of taking specified in the incidental take statement is
13 exceeded; (b) If new information reveals effects of the action that may affect listed
14 species or critical habitat in a manner or to an extent not previously considered; (c) If
15 the identified action is subsequently modified in a manner that causes an effect to the
16 listed species or critical habitat that was not considered in the Biological Opinion; or
17 (d) If a new species is listed or critical habitat designated that may be affected by the
18 identified action.” 50 C.F.R. § 402.16; and

19 **WHEREAS**, genetic studies are currently being conducted to determine or
20 confirm that two distinct sub-types of *Serianthes Nelsonii* exist between Rota and
21 Guam, which would constitute as “new information” that would trigger re-initiation of
22 the Biological Opinion for the *Serianthes Nelsonii*; and

23 **WHEREAS**, if formal consultation must be reinitiated, the Navy cannot, prior to
24 the completion of the consultation (i.e., issuance of a new biological opinion) “make
25 any irreversible or irretrievable commitment of resources with respect to the agency
26 action which has the effect of foreclosing the formulation or implementation of any

1 reasonable and prudent alternative measures” necessary to avoid jeopardy to any listed
2 species. 16 U.S.C. § 1536(d); and

3 **WHEREAS**, in addition to LFTRC clearing activities, the proposed action will
4 create a Surface Danger Zone (SDZ) over approximately 68 percent of the Guam
5 National Wildlife Refuge (GNWR) at Ritidian Point during operation of the LFTRC.
6 The SDZ will cover the GNWR access road, visitor center, offices, and other facilities
7 and thereby limit access to the GNWR while firing occurs at the LFTRC. Any entry
8 into GNWR will require scheduling with and approval by Live Fire LFTRC Range
9 Control personnel. The limited access that GNWR staff will have to the refuge property
10 during the estimated (9.75) months per year the LFTRC is active will limit the amount
11 of habitat management that can occur at the GNWR; and

12 **WHEREAS**, LFTRC utilization is estimated to be 39 weeks per year, which
13 would deny access to GNWR and fishing within the SDZ area for nine months of the
14 year; and

15 **WHEREAS**, on June 18, 2019, a collective of twenty (20) local organizations
16 and businesses signed and transmitted a request to halt the clearing of vegetation and
17 construction of the Marine’s Cantonment at Finegayan and of the LFTRC submitted to
18 Governor Lourdes Leon Guerrero. The letter details concern of the military’s actions in
19 moving artifacts without consultation or consent from the Government of Guam, nor
20 SHPO nor, the people of Guam, who are expressing their concern through this letter;

21 **WHEREAS**, CHamorus and the people of Guam have the right to preserve these
22 cultural and historic properties as well as the life within the properties. It is critical that
23 no further development or construction for the live-firing range at North west Field is
24 carried out, in order to prevent the irreversible and total destruction of our historical and
25 cultural sites and to protect the inestimable value of the land, resources, wildlife, plants
26 and historical artifacts of Guam, now, therefore be it

1 **RESOLVED**, that the Committee on Rules of *I Mina'trentai Singko Na*
2 *Liheslaturan Guåhan* does hereby, on behalf of *I Liheslaturan Guåhan* and the people
3 of Guam, respectfully urge Governor Lourdes Leon Guerrero to call for a halt to
4 clearing, pre-construction, data recovery and construction activities related to the
5 proposed Live-Fire Training Range Complex at Northwest Field or Tailalo, adjacent to
6 Litekyanin in order to ensure the protection of the environment and historic and cultural
7 resources of the northern coastline of Guam now; and be it further;

8 **RESOLVED**, that the Speaker and the Chairperson of the Committee on Rules
9 certify, and the Legislative Secretary attest to, the adoption hereof, and that copies of
10 the same be thereafter transmitted to the Honorable Lourdes A. Leon Guerrero, *I*
11 *Maga'hågan Guåhan*.

**DULY AND REGULARLY ADOPTED BY THE COMMITTEE ON RULES OF
I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN ON THE DAY
OF JUNE 2019.**

TINA ROSE MUÑA BARNES
Speaker

RÉGINE BISCOE LEE
Chairperson, Committee on Rules

AMANDA L. SHELTON
Legislative Secretary

Appendix

Appendix A 1: Guam Range Mitigation Plan (September 2015)

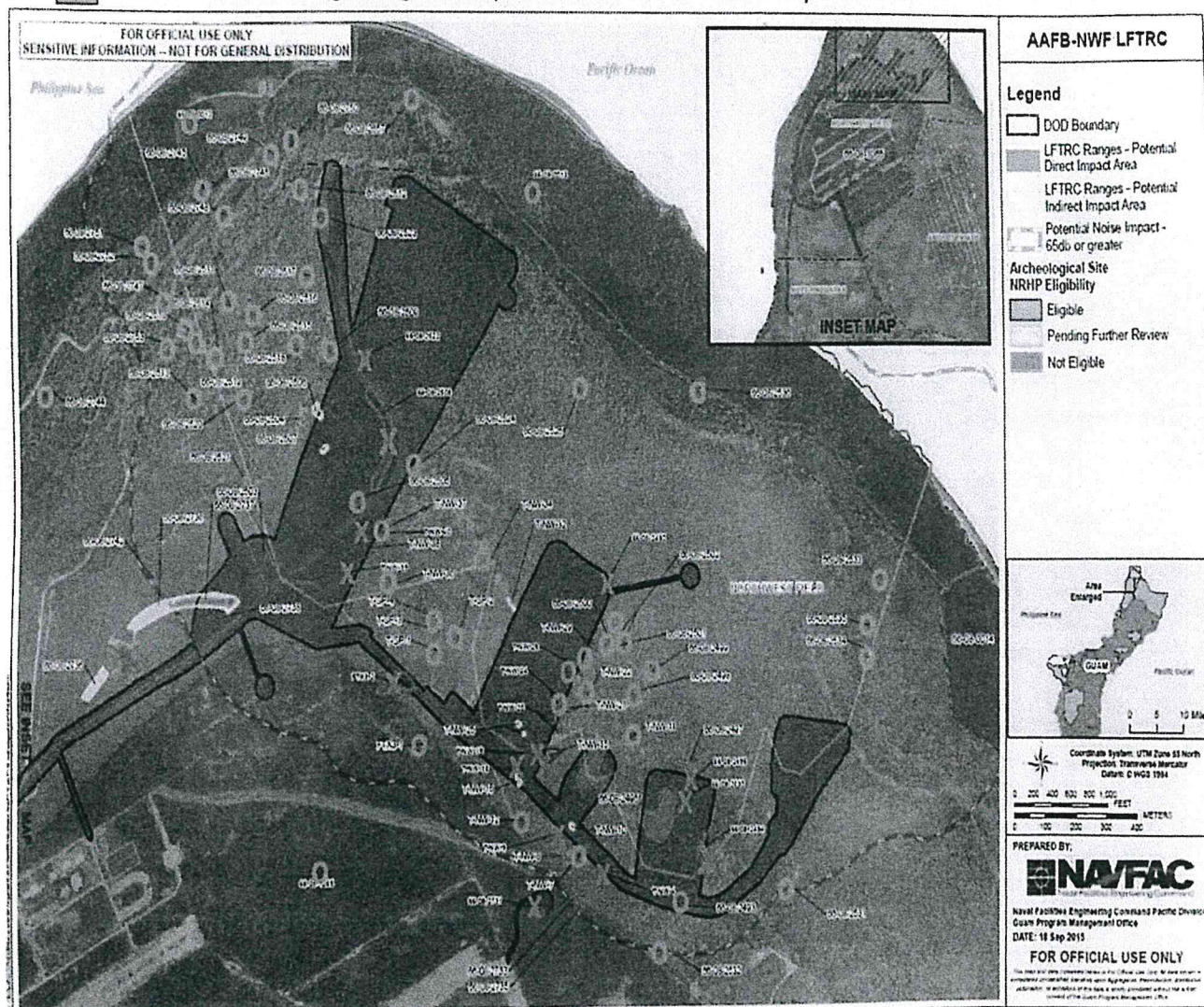
Appendix B 1: Final SEIS – Guam and Commonwealth of the Northern Mariana Islands Military Relocation (July 2015), Figure 5.5.8-3

Appendix B 2: Final SEIS – Guam and Commonwealth of the Northern Mariana Islands Military Relocation (July 2015), Figure 5.5.9-1

X = 14 Historic sites (all NRHP eligible) removed via data recovery

O = 80 Other Known historic (NRHP eligible and ineligible) sites

■ = Live Fire Training Range Complex – Potential Direct Impact Area



Source: GUAM RANGE MITIGATION PLAN (SEPTEMBER 2015)

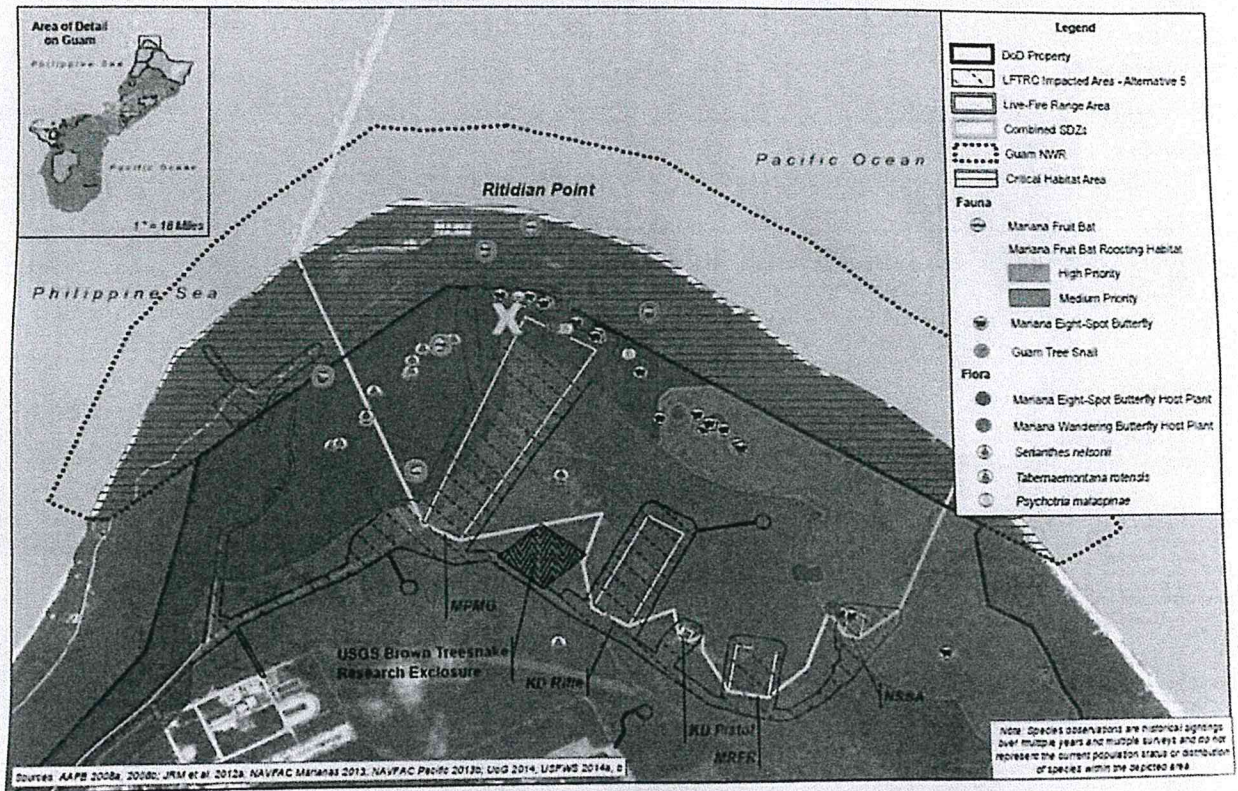
Note: X and O enhanced for emphasis

Appendix A A

Special-Status Species Observations

X = *Serianthes nelsonii*

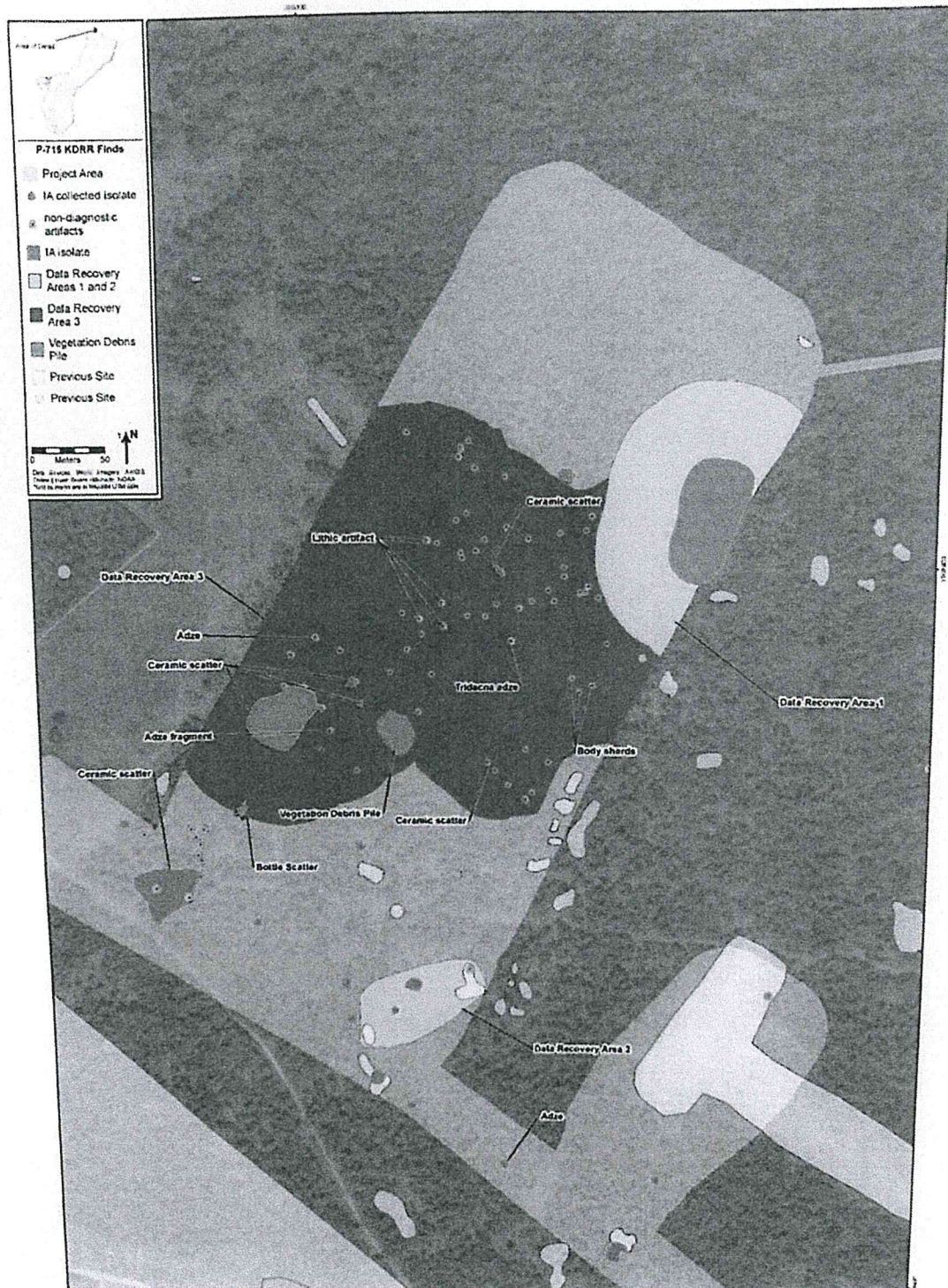
O = Mariana Fruit Bat



Source: Final SEIS - Guam and Commonwealth of the Northern Mariana Islands Military Relocation (July 2015), Figure 5.5.8-3

Note: X and O enhanced for emphasis

Appendix B 1



Appendix B 2