

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

Resolution No. -35 (COR)

Introduced by:

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Sabina Flores Perez
Amanda L. Shelton
Joe S. San Agustin
Kelly Marsh (Taitano)
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Telo Taitague
William M. Castro
Louise Borja Muna
James C. Moylan
Mary Camacho Torres

Relative to respectfully requestingealling thatfor the
support of Governor Lourdes A. Leon Guerrero seek a
temporary pause toto halt construction and pre-
construction activities related to the U.S. Department of the
Navy's proposed Live-Fire Training Range Complex at
Northwest Field in order to ensure the protection of the
recently discovered environmentalal 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 first Programmatic Agreement (PA) was established in
2 2011 between Guam State Historic Preservation Office (SHPO), CNMI State Historic
3 Preservation Office (SHPO) and the U.S. Department of Defense (DoD). The
4 Programmatic Agreement (PA) is a contract that demands both parties (SHPO and
5 DoD) to comply with a process that includes consultation, review and compliance
6 concerning historic preservation laws and outlines environmental responsibilities of
7 the military concerning the impacts of training activities on Guam; and

8 WHEREAS, ~~the~~ review process includes initiating the process, identifying
9 historic properties, assessing adverse effects, resolving adverse effects and then
10 proceeding. Development of a Programmatic Agreement (PA) includes consultation
11 with the Guam State Historic Preservation Office, the CNMI State Historic
12 Preservation Office, the Advisory Council on Historic Preservation (ACHP), invited
13 signatories, concurring parties and the public, but negotiations regarding what must be
14 included for what actually goes in the agreement are solely between the State Historic
15 Preservation Offices (SHPO) and the U.S. Department of Defense (DoD); ~~and~~

16 WHEREAS, ~~the~~ Programmatic Agreement (PA) is intended to be a tool for
17 accountability through procedures, studied impacts and mitigation; and

18 **WHEREAS**, the Programmatic Agreement was put in place to primarily
19 uphold the National Historic Preservation Act (NHPA) which is a law that gives
20 Guam the right to preserve historic properties that reflect historic heritage, are a part
21 of our cultural foundations; and

22 WHEREAS , that living culture is a cornerstone as a living part of f
23 community this community; a life and development, are the legacy of irreplaceable
24 cultural, educational, inspirational, economic, and energy benefits, that and provides
25 increased knowledge of our island's historic resources; and

1 **WHEREAS**, Section 106 of the National Historic Preservation Act (NHPA)
2 demonstrates that before the approval of Federal funds for any project, the Federal
3 agency that has direct or indirect jurisdiction over a proposed site has to take into
4 account the effects on such district or site to meet the requirements of the National
5 Environmental Policy Act (NEPA); and

6 **WHEREAS**, the National Environmental Policy Act (NEPA) is a law that
7 protects the environment and requires agencies to first conduct scoping, identification,
8 assessment, and consultation to assess potential environmental impacts on current
9 pending or future projects and activities of the military; and

10 **WHEREAS**, the NEPA's process coupled with ~~match~~the process outlined by
11 with the Programmatic Agreement process and both must be done in order for the
12 military to proceed in their proposed testing and training activities; and

13 **WHEREAS**, a draft of an environmental impact statements (EIS) is to be
14 made available to the public and a final environmental impact statement (FEIS) is to
15 be issued shortly after; and

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

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

1 **WHEREAS**, the Navy stated it would analyze the impacts of the relocated
2 Marines’ live-fire training ranges on Tinian and Pagan in an entirely separate EIS,
3 namely the Commonwealth of the Northern Mariana Islands (CNMI) Joint Military
4 Training Environmental Impact Statement (CJMT EIS) which allows the public to
5 participate in the NEPA process in order for the military to prepare and EIS – a draft
6 of which was issued in April 2015. The impacts and mitigation of the CJMT EIS
7 allow for adverse effects on proposed military training areas, but ensure the
8 accountability of the military to go through the NEPA and PA processes in order to
9 track the damages to these areas; and

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

22 **WHEREAS**, in August 2015, the Navy issues another Record of Decision
23 (2015 ROD) based on the SEIS. This second ROD reaffirmed the Navy’s 2010
24 decision to relocate Marines from Okinawa to the Marianas despite the lack of
25 analysis of the live-fire training ranges on Tinian and Pagan; and

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

3 **WHEREAS**, on July 27, 2016, Earthjustice, representing concerned citizens
4 groups in the CNMI, filed a lawsuit under the National Environmental Policy Act
5 (NEPA) in the United States District Court for the Northern Mariana Islands alleging
6 the proposed live-fire training ranges in Guam and the CNMI were “cumulative and
7 connected actions” under NEPA, which should have been considered under a single
8 EIS, and that the Navy had desecrated the area, destroyed native forests and coral
9 reefs, and neglected to consider alternative locations outside the Mariana Islands for
10 their firing range training sites in compliance with federal law; and

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

23 **WHEREAS**, on September, 26, 2017 Guam State Historic Preservation Office
24 (SHPO) confirmed the Draft Technical Report included inadequate background
25 research, quality control of reports made for inefficient reviews, maps for potential
26 effect from two sources did not match, agreed upon mitigation measure was changed

1 when found that a site that was to be preserved was actually excavated causing
2 destruction, subsurface testing was not considered, and sites were insufficiently
3 identified, evaluated or data recovered and therefore did not show a full depiction of
4 what the may truly represent as far as landscape, settlement and cultural practices.
5 Guam State Historic Preservation Office (SHPO) informed the Advisory Council on
6 Historic Preservation (ACHP) that prior to the signing of the ROD (Record of
7 Decision) in 2015, projects on historic properties have not been thoroughly considered
8 in projecting full effects on the land and requested a reevaluation; and

9 **WHEREAS**, on October 13, 2017, the Advisory Council on Historic
10 Preservation (ACHP) advised Guam State Historic Preservation Office (SHPO) to
11 refer back to the National Environmental Preservation Act (NEPA) and Programmatic
12 Agreement process on solving disputes. On December 22, 2017, Department of the
13 U.S. Navy granted a forty-five (45) day extension inclusive of the time and days to
14 request a reevaluation, which totaled a ninety (90) day extension for the Draft
15 Technical Report; and

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

23 **WHEREAS**, in August 2018, despite Guam Legislative's initiative with
24 Resolution 228-34 passed in 2018 to pause development and construction on the firing
25 range complex at Northwest Field, the military had initiated their activities, according
26 to an a Aug. 13 Stars and Stripes article that states "Construction on the known

1 distance ranges and live-fire training range complex has just begun. The \$78 million
2 project — scheduled to be completed in fall of 2020 — will include four ranges and
3 some support facilities.” The five live fire training ranges are to be built near Guam’s
4 primary resource for drinking water, the Northern Lens Aquifer, and could cause
5 irreversible contamination; and

6 **WHEREAS**, in late May and early June 2019 a new site was discovered with
7 Latte-period artifacts at the live fire training range's future site at Northwest Field.
8 Shortly after the first discovery three sites with more remnants of the ancient village
9 Magua' were discovered on the future Marine Corps Base. Uncovered during the
10 clearing of vegetation at the Known Distance Rifle Range (KDRR) were 400 pieces of
11 latte-period ceramic pottery found in one dense area, earth ovens, various stone, shell
12 artifacts in two other areas, and *lusong* or mortar and pestle and ceramic scatters on a
13 roadway adjacent to KDRR; and

14 **WHEREAS**, the four new discoveries of historic properties are in addition to
15 the ninety-four (94) other known historic sites at the proposed LFTRC site. Fourteen
16 known historic sites have already been removed (via “data recovery”) and the eighty
17 other historic properties will also be adversely impacted by the proposed LFTRC site.
18 "Data recovery" as written in the Programmatic Agreement is the removal of only a
19 sampling of archaeologically relevant material (i.e. latte, lusong, earth ovens, pottery
20 pieces, etc.) and any remaining artifacts at the site are left to the discretion of the
21 contractor to dispose (see Appendix A 1); and

22 **WHEREAS**, the largest of the five firing ranges at the proposed LFTR site is
23 the 59-acre Multipurpose Machine Gun (MPMG) Range closest to the endangered
24 *Serianthes Nelsonii* tree and is slated to be cleared next, which may result in
25 additional significant inadvertent discoveries of historic properties; and

1 **WHEREAS**, approximately 683 of the 1,219 acres of limestone forests are
2 proposed to be cleared in northern Guam. The July 2017 Biological Opinion issued by
3 the U.S. Fish and Wildlife Service discusses the clearing of a total of 1,219 acres of
4 limestone forest habitat, including the clearing of 187 acres of limestone forest habitat
5 at Northwest Field, the clearing of 212 acres of limestone forest habitat for the hand
6 grenade range, urban terrain training area and other activities at Andersen South, the
7 clearing of 12 acres of limestone forest habitat for well fields and water system at
8 Andersen Air Force Base, and the 683 acres of limestone forest for cantonment at
9 Finegayan; and.

10 **WHEREAS**, ~~In the~~ past the military construction activity has brought
11 destructive invasive species such as the brown tree snake that have endangered and
12 caused extinction of the majority of our native wildlife animals and plants; and

13 ~~The military has been on land and property that cultivate native plant~~
14 ~~and animal habitats that DoD claim to preserve and protect, while at the same~~
15 ~~time conducting environmentally destructive training and testing on and around~~
16 ~~those same habitats (see appendix B-1); and~~

17 **WHEREAS**, the *Serianthes nelsonii* or hayun lagu tree, the only reproductive
18 tree on Guam, along with *Pteropus mariannus mariannus* (Mariana fruit bat or
19 *fanihi*), *Hypolimnas octocula marianensis* (Mariana eight-spot butterfly or *ababbang*),
20 *Tabernaemontana rotensis*, *Heritiera longipetiolata* (*ufa halumtanu*), and *Cycas*
21 *micronesica* (*fadang*) are all threatened or endangered species mostly incorporated in
22 DoD controlled properties. The limestone forest provides a habitat that is vital to the
23 survival of all these species especially the *Serianthes Nelsonni* tree, which is the last
24 of its kind. Else Demeulenarere, Associate Director of the Center for Island
25 Sustainability and Biologist stated, “A hundred (100) feet buffer is not enough to
26 sustain a healthy *Serianthes* population surrounded by a healthy forest. The current

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1 tree and the seedlings should be preserved as a viable *Serianthes* population, because
2 the seedlings thrive in the current enclosure.” The seedlings of the *Serianthes* tree are
3 found under the tree and should not be uprooted or replanted, but be allowed to thrive
4 in its natural habitat where its currently stands (see Appendix B 1 and Appendix B 2);
5 and

6 **WHEREAS**, the limestone forest provides an even larger forested area serving
7 as habitat for eleven endangered species: *Pteropus mariannus mariannus* (Mariana
8 fruit bat or *fanihi*), *Hypolimnys octocula marianensis* (Mariana eight-spot butterfly or
9 *ababbang*), *Bulbophyllum guamense* (*siboyas halumtanu*), *Dendrobium guamense*,
10 *Tuberolabium guamense*, *Cycas micronesica* (*fadang*), *Heritiera longipetiolata* (*ufa*
11 *halumtanu*), and *Tabernaemontana rotensis*, *Partula radiolata* (Guam tree snail or
12 *akaleha*), *Samoana fragilis* (fragile tree snail or *akaleha dogas*), and *Partula gibba*
13 (humped tree snail or *akaleha*). In total, approximately 78 acres (32 ha) of primary
14 limestone forest and 109 ac (44 ha) of secondary limestone forest would be
15 permanently cleared for construction of the live fire training range complex (LFTRC);
16 and

17 **WHEREAS**, the Endangered Species Act requires a Biological Opinion when
18 endangered and/or threatened species may be adversely impacted by federal actions.
19 Furthermore, the Biological Opinion may be re-initiated “where discretionary federal
20 involvement or control over the action has been retained or is authorized by law and:
21 (a) If the amount or extent of taking specified in the incidental take statement is
22 exceeded; (b) If new information reveals effects of the action that may affect listed
23 species or critical habitat in a manner or to an extent not previously considered; (c) If
24 the identified action is subsequently modified in a manner that causes an effect to the
25 listed species or critical habitat that was not considered in the Biological Opinion; or

1 (d) If a new species is listed or critical habitat designated that may be affected by the
2 identified action.” 50 C.F.R. § 402.16; and

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

7 **WHEREAS**, if formal consultation must be reinitiated, the Department of the
8 Navy cannot, prior to the completion of the consultation (i.e., issuance of a new
9 biological opinion) “make any irreversible or irretrievable commitment of resources
10 with respect to the agency action which has the effect of foreclosing the formulation
11 or implementation of any reasonable and prudent alternative measures” necessary to
12 avoid jeopardy to any listed species. 16 U.S.C. § 1536(d); and

13 **WHEREAS**, in addition LFTRC clearing activities, the proposed action will
14 create a Surface Danger Zone (SDZ) over approximately 68 percent of the Guam
15 National Wildlife Refuge (GNWR) at Ritidian Point during operation of the Live Fire
16 Training Range Complex (LFTRC). The SDZ will cover the Guam National Wildlife
17 Refuge (GNWR) access road, visitor center, offices, and other facilities and thereby
18 limit access to the Guam National Wildlife Refuge (GNWR) while firing occurs at the
19 Live Fire Training Range Complex (LFTRC). Any entry into Guam National Wildlife
20 Refuge (GNWR) will require scheduling with and approval by Live Fire Training
21 Range Complex (LFTRC) Range Control personnel. The limited access that Guam
22 National Wildlife Refuge (GNWR) staff will have to the refuge property during the
23 estimated (9.75) months per year the Live Fire Training Range Complex (LFTRC) is
24 active will limit the amount of habitat management that can occur at the Guam
25 National Wildlife Refuge (GNWR) ; and

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

8 ~~**WHEREAS**, On June 19, 2019, dismissal of State Historic Preservation~~
9 ~~Officer, Lynda Aguon leaving Guam vulnerable to further bulldozing of historic sites~~
10 ~~and voiceless during a critical period of potential harm to our culture and~~
11 environment; and

12 **WHEREAS**, CHamorus and the people of Guam have the right to preserve
13 these cultural and historic properties as well as the life within the properties. It is
14 critical that ~~no~~ further development or construction for the live-firing range at North
15 west Field is to be ~~temporarily paused-carried out~~, in order to prevent the potentially
16 ~~irreversible_ and total~~ destruction of our historical and cultural sites ~~and to protect the~~
17 ~~inestimable value of the land, resources, wildlife, plants and historical artifacts of~~
18 ~~Guam~~, now, therefore be it

19 **RESOLVED**, that ~~the Committee on Rules of I Mina'trentai Singko Na~~
20 ~~Liheslaturan Guåhan~~ does hereby, on behalf ~~of I Liheslaturan Guåhan~~ and the people
21 of Guam, respectfully urge Governor Lourdes Leon Guerrero to ~~halt~~ seek a temporary
22 pause of the development and construction for the live-firing range at North west
23 Field in order until genetic studies are concluded to determine or confirm that two
24 distinct sub-types of *Serianthes Nelsonii* exist between Rota and Guam, ~~to preserve~~
25 ~~important cultural and historical resources now~~; and be it further;

1 **RESOLVED**, that the Speaker and the Chairperson of the Committee on Rules
2 certify, and the Legislative Secretary attest to, the adoption hereof, and that copies of
3 the same be thereafter transmitted to the Honorable Lourdes A. Leon Guerrero, *I*
4 *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

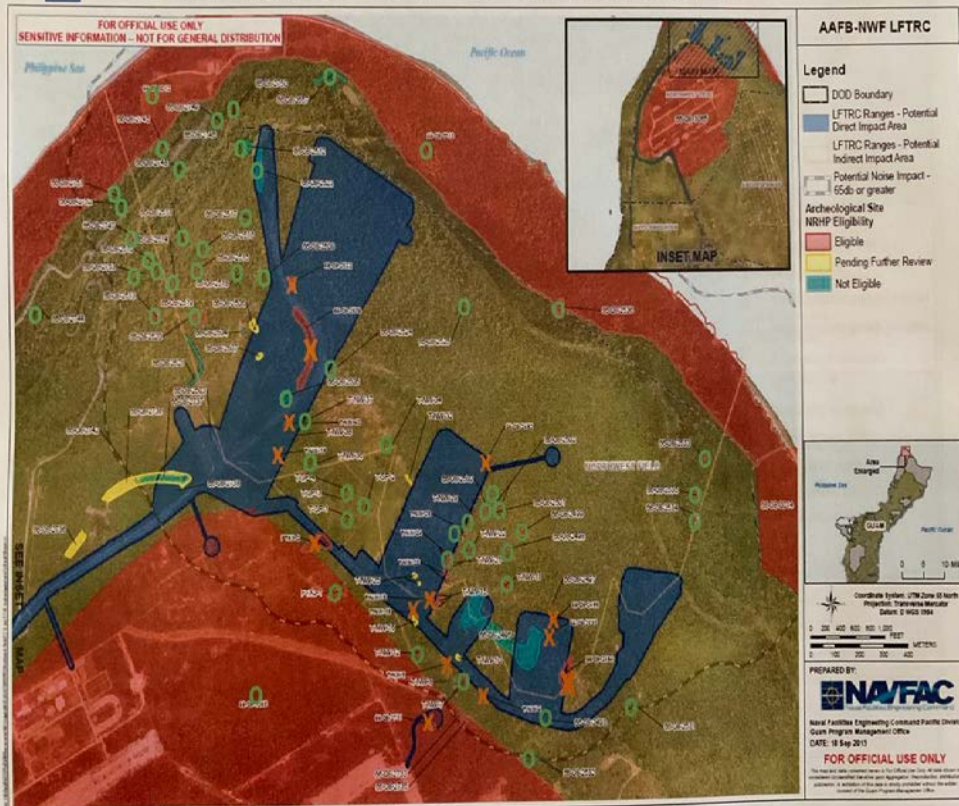
Appendix

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

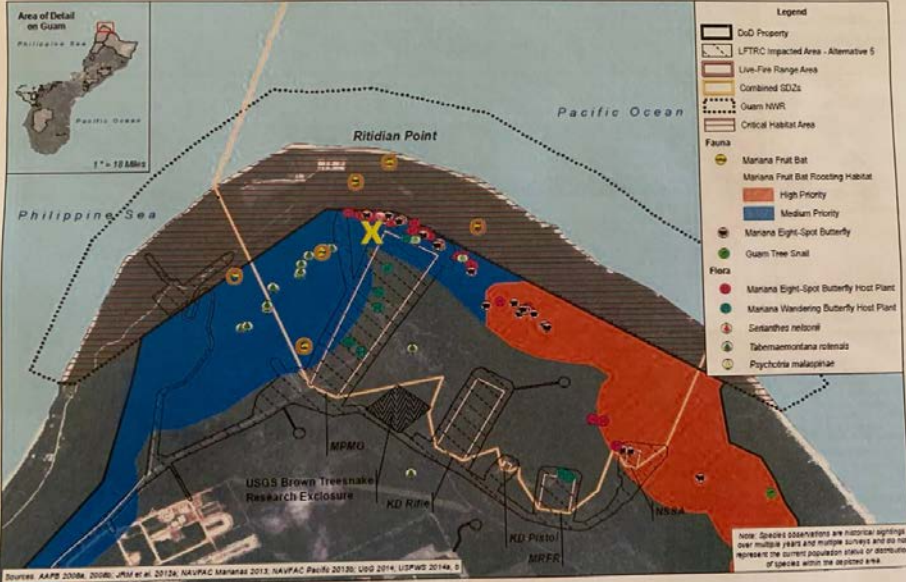


Source: GUAM RANGE MITIGATION PLAN (SEPTEMBER 2015)
Note: X and O enhanced for emphasis

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

