

APPENDIX E
APPLICABLE FEDERAL AND LOCAL REGULATIONS AND LAND USE
AGREEMENTS

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APPENDIX E

E.1 APPLICABLE FEDERAL AND LOCAL REGULATIONS

This appendix provides a list of federal and Commonwealth of the Northern Mariana Islands (CNMI) regulations that may be required for implementation of the Proposed Action. The Department of Defense (DoD) Proposed Action would be implemented in accordance with all applicable regulatory mandates.

Table E-1 lists Executive Orders, Table E-2 lists federal regulations, and Table E-3 lists CNMI regulations. In addition, facilities would be designed and constructed in accordance with Unified Facilities Criteria (UFC), including Seismic Design for Buildings (UFC 3-310-04).

Table E-1. Executive Orders

<i>Regulatory Requirement</i>	<i>Resource Area</i>
Executive Order 12788: Defense Economic Adjustment Program	Socioeconomics
Executive Order 11990: Protection of Wetlands	Surface Waters and Wetlands
Executive Order 13112: Invasive Species	Terrestrial Biological Resources
Executive Order 13186: Responsibilities of Federal Agencies to Protect Migratory Birds	Terrestrial Biological Resources
Executive Order 13751: Safeguarding the Nation from Impacts of Invasive Species	Terrestrial Biological Resources
Executive Order 10854: Extension of the Application of the Federal Aviation Act of 1958	Transportation

Table E-2. Federal Law and Regulation

<i>Regulatory Requirement</i>	<i>Resource Area</i>
Clean Air Act 42 U.S.C. section 7401 et seq.	Air Quality and Greenhouse Gases; Utilities
National Environmental Policy Act, 42 U.S.C. section 4321 et seq.	All
Procedures for Implementing the National Environmental Policy Act, 32 C.F.R. 775	All
Environmental Readiness Program Manual, OPNAV M-5090.1	All
DON, Marine Corps Order 5090.2, Environmental Compliance and Protection Program	All
Historic Sites Act, 16 U.S.C. section 461-467	Cultural Resources
Abandoned Shipwreck Act, 43 U.S.C. sections 2101–2106 National Historic Landmarks Program, 36 C.F.R. 65	Cultural Resources
Sunken Military Craft Act of 2004, 10 U.S.C. 113–118 Protection of Historic Properties, 36 C.F.R. 800	Cultural Resources
Determinations of Eligibility for Inclusion in the National Register of Historic Places, 36 C.F.R. 63	Cultural Resources
American Battlefield Protection Act as amended, 16 U.S.C. section 469k	Cultural Resources
Archaeological Resources Protection Act of 1979, 16 U.S.C.	Cultural Resources

<i>Regulatory Requirement</i>	<i>Resource Area</i>
470aa-470mm; Public Law 96-95 as amended	
Curation of Federally-Owned and Administered Archeological Collections, 36 C.F.R. Part 79	Cultural Resources
National Historic Preservation Act, 54 U.S.C. section 300101 et seq.	Cultural Resources
National Register of Historic Places, 36 C.F.R. Part 60	Cultural Resources
Department of Defense Instruction 4715.16, Cultural Resources Management	Cultural Resources
Territorial Submerged Lands Act, 48 U.S.C. sections 1701–1708	Land Use
Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, U.S. Public Law 94-241, 90 Stat. 272, Article 8 (1976)	Land Use
Proclamation No. 9077, 79 Federal Register 3479 (January 15, 2014)	Land Use
Coastal Zone Management Act Federal Consistency Regulations (15 C.F.R. Part 930)	Land Use
Air Pollution Control Act (Title IV – Noise Pollution), 42 U.S.C. section 7641	Noise
Occupational Safety and Health, 29 U.S.C. section 651 et seq.	Noise
Department of Defense Instruction 4715.13, DoD Operational Noise Program	Noise
Federal Aviation Administration Regulation 150/5370-2G, 14 C.F.R. Part 77, Operational Safety on Airports During Construction	Public Health and Safety
Federal Aviation Administration Regulation, 14 C.F.R. Part 91, General Operating and Flight Rules	Public Health and Safety
Navigable Airspace regulations, 14 C.F.R. Part 77	Public Health and Safety
MCO 5530.14A, Marine Corps Physical Security Program Manual (U.S. Marine Corps 2009)	Public Health and Safety
UFC 4-020-01, DoD Security Engineering Facilities Planning Manual (DoD 2008a)	Public Health and Safety
MCO 3570.1C, Range Safety (U.S. Marine Corps 2012)	Public Health and Safety
MCO 5100.29C, Marine Corps Safety Management System, Volume 7, Marine Corps Radiation Safety Program (U.S. Marine Corps 2021)	Public Health and Safety
Toxic Substances Control Act (40 C.F.R. 761)	Public Health and Safety, Surface Waters and Wetlands
Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. sections 9601 to 9675	Public Health and Safety; Surface Waters and Wetlands
Emergency Planning and Community Right-to-Know Act, 42 U.S.C. sections 11001 to 11050	Public Health and Safety; Topography, Geology, and Soils; Surface Waters and Wetlands
Military Base Reuse Studies and Community Planning Assistance, 10 U.S.C. section 2391	Socioeconomics
Rivers and Harbor Act, 33 U.S.C. section 403, Section 10	Surface Waters and Wetlands

<i>Regulatory Requirement</i>	<i>Resource Area</i>
Coastal Zone Management Act, 16 U.S.C. ch.33 section 1451 et seq.	Surface Waters and Wetlands; Land Use; Topography, Geology, and Soils
Safe Drinking Water Act, 42 U.S.C. sections 300f to 300j-26	Surface Waters and Wetlands; Utilities; Groundwater Hydrology
Endangered Species Act, 16 U.S.C. sections 1531–1544	Terrestrial Biological Resources
Migratory Bird Treaty Act, 16 U.S.C. sections 703–712	Terrestrial Biological Resources
Fish and Wildlife Coordination Act	Terrestrial Biological Resources
Department of Defense Instruction 4715.03, Natural Resources Conservation Program	Terrestrial Biological Resources
Farmland Protection Policy Act, 7 U.S.C. section 4201	Topography, Geology, and Soils
Hazardous Materials Transportation Safety Act, 49 U.S.C. sections 1801–1819	Topography, Geology, and Soils
Toxic Substances Control Act, 15 U.S.C. sections 2601-2629	Topography, Geology, and Soils
Department of Defense Construction Guidelines (UFC 3-310-04) addressing seismic activity	Topography, Geology, and Soils; Public Health and Safety
Clean Water Act, 33 U.S.C. section 1251 to 1387 <ul style="list-style-type: none"> • Section 401, Certification and Wetlands • Section 402, National Pollutant Discharge Elimination System • Section 404, Dredge/fill navigable waters 	Topography, Geology, and Soils; Public Health and Safety; Groundwater Hydrology
Security Zones; Tinian, CNMI (33 C.F.R. 165.1403)	Transportation
Shipping Safety Fairways (33 C.F.R. 166)	Transportation
Offshore Traffic Separation Themes (33 C.F.R. 167)	Transportation
Federal Highway Administration’s <i>A Policy on Geometric Design of Highways and Streets</i> (American Association of State Highway and Transportation Officials 2011)	Transportation
UFC 3-250-18FA, <i>General Provisions and Geometric Design For Roads, Streets, Walks, and Open Storage Areas</i> (Department of Defense 2004)	Transportation
Aeronautics and Space, 4 C.F.R. Part 73, Special Use Airspace	Transportation
Department of Defense Directive 5030.19, Department of Defense Responsibilities on Federal Aviation	Transportation
U.S. Department of Transportation regulations and C.F.R. Title 49	Transportation
FAA Advisory Circular 70/7460-1, Obstruction Marking and Lighting	Transportation
FAA Order Job Order 7400.2, Procedures for Handling Airspace Matters	Transportation
FAA Order Job Order 7400.10, Special Use Airspace	Transportation
FAA Order Job Order 7110.65, Air Traffic Control	Transportation
FAA Order 7930.2, Notices to Airmen	Transportation
FAA Order 8260.19, Flight Procedures and Airspace	Transportation
Title 49, U.S.C. section 40101 et seq., Air Commerce and Safety	Transportation
Federal Highway Administration, Department of Transportation, 23 C.F.R. sections 1–1275	Transportation

<i>Regulatory Requirement</i>	<i>Resource Area</i>
Solid Waste Disposal, 42 U.S.C. section 7401 et seq.	Utilities
Resource Conservation and Recovery Act, including Military Munitions Rule 42 U.S.C. sections 6901 to 6992k	Utilities; Public Health and Safety; Surface Waters and Wetlands; Topography, Geology, and Soils

Legend: C.F.R. = Code of Federal Regulations; DoD = Department of Defense; DON = Department of the Navy; FAA = Federal Aviation Administration; MCO = Marine Corps Order; OPNAV = Office of the Chief of Naval Operations; UFC = Unified Facilities Criteria; U.S. = United States; U.S.C. = United States Code.

Table E-3. CNMI Regulations

<i>Regulatory Requirement</i>	<i>Resource Area</i>
CNMI Public Law 3-39, the Commonwealth Historic Preservation Act of 1982	Cultural Resources
CNMI Public Law 3-33; establishes a permit and penalty process for the excavation and removal of human remains	Cultural Resources
CNMI Public Law 10-71; amends the Commonwealth Historic Preservation Act of 1982 to increase the membership of the Review Board and to increase the monetary penalty for violations of the Act	Cultural Resources
Well Drilling and Well Operation Regulations (CNMI Administrative Code Chapter 65-140)	Groundwater Hydrology
Water Quality Standards, Northern Mariana Islands Administrative Code section 65-130	Groundwater Hydrology
Coastal Resources Management Act, (2 CMC section 1501 et seq.)	Land Use
Public Lands Act (Public Law 15-2)	Land Use
CNMI Constitution Article XI, Public Lands	Land Use
CNMI Public Law 16-50 (2010), as amended by Public Law 20-05 (2017)	Land Use
CNMI Public Law 15-10 (2018), Coastal Resources Management Rules and Regulations	Land Use
CNMI Homestead Program, CNMI Public Law 15-02 (2007)	Land Use
Constitution of the CNMI, Section 9	Noise
Harmful Substance Clean Up Regulations	Public Health and Safety
Hazardous Waste Management Regulations	Public Health and Safety
DoD Construction Guidelines addressing seismic activity, Unified Facilities Criteria 3-310-04	Public Health and Safety
Commonwealth Environmental Protection Act, Public Law 3-23	Public Health and Safety
Above Ground Storage Tank Regulations, Northern Mariana Islands Administrative Code section 65-5	Public Health and Safety
CNMI Coastal Resources Management Rules and Regulations (Administrative Code Title 15-10)	Socioeconomics
Wastewater Treatment and Disposal Rules and Regulations (CNMI Administrative Code Chapter 65-120)	Surface Waters and Wetlands
Drinking Water Regulations (CNMI Administrative Code Chapter 65-20)	Surface Waters and Wetlands; Groundwater Hydrology
Threatened and Endangered Species (CNMI Administrative Code section 85-30.1-101)	Terrestrial Biological Resources
Endangered Species Act, Public Law 2-51	Terrestrial Biological Resources

<i>Regulatory Requirement</i>	<i>Resource Area</i>
Federal Aid in Wildlife Restoration Act	Terrestrial Biological Resources
Title 2 Section 5103: Conservation Offices	Terrestrial Biological Resources
Title 85 Section 309.1 100: Threatened and Endangered Species	Terrestrial Biological Resources
Water Quality Standards, Northern Mariana Islands Administrative Code section 65-140	Topography, Geology, and Soils; Groundwater Hydrology; Utilities
Environmental Protection Act (2 CMC section 3101 et seq.)	Topography, Geology, and Soils; Public Health and Safety; Surface Waters and Wetlands
Earthmoving and Erosion Control Regulations, Regulations (CNMI Administrative Code Chapter 65-30)	Topography, Geology, and Soils; Public Health and Safety; Utilities
CPA, Seaport Division, Northern Mariana Islands Administrative Code section 40-20	Transportation
DPW, Public Rights-of-way and Related Facilities Regulations, Northern Mariana Islands Administrative Code section 155-20.1	Transportation
CPA Title 40-10, Airport Division	Transportation
Specific Regulated Navigation Areas and Limited Access Areas, Island of Tinian, CNMI (33 C.F.R. 110.239)	Transportation
Solid Waste Management Regulations (CNMI Administrative Code Chapter 65-80)	Utilities
Underground Injection Control Regulations (CNMI Administrative Code Chapter 65-90)	Utilities
CNMI and Guam Stormwater Management Manual (2006)	Utilities
Pesticide Management Regulations, Northern Mariana Islands Administrative Code section 65-70	Utilities
Air Pollution Control Regulations (CNMI Administrative Code Chapter 65-10)	Utilities; Air Quality and Greenhouse Gases

Legend: C.F.R. = Code of Federal Regulations; CMC = Commonwealth Code; CNMI = Commonwealth of the Northern Mariana Islands; CPA = Commonwealth Ports Authority; DoD = Department of Defense; DPW = Department of Public Works.

E.2 LAND AGREEMENTS WITHIN THE MILITARY LEASE AREA

The history of DoD use of the Military Lease Area has been defined by several land use agreements, beginning in 1975:

- 1975 Covenant and Technical Agreement.** Sections 802 and 803 of the *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America* (hereinafter “the Covenant”) (United States of America and the Commonwealth of the Northern Mariana Islands 1975) along with the concurrently adopted *Technical Agreement Regarding Use of Land to Be Leased by the United States in the Northern Mariana Islands*, made property available to the United States (U.S.) by lease to enable it to carry out its defense responsibilities. This property included approximately 17,799 acres on Tinian. As part of the agreements, all shoreline areas in and around the northern two-thirds of Tinian would remain open to anglers at all possible times except for those limited areas that must be closed to comply with safety, security, and hazardous risk requirements from either military activities or commercial activities. In addition, the Covenant assured CNMI residents the same access to beach areas that military personnel and dependents would have, limited only by safety restrictions during times of active

military training. During times of military maneuvers, operations, or related activity, the public use of certain beaches or areas of the beach would be restricted.

- **1983 Lease.** In 1983, the U.S. entered into a lease agreement with the Marianas Public Land Corporation and the CNMI for use of property to carry out DoD defense responsibilities on Tinian. The term of the lease agreement is 50 years, with an option to renew at the sole discretion of the U.S. for an additional 50 years. Under the lease provisions, the Federal government shall have the right to construct, place, erect, or install such buildings, structures, equipment, and facilities as may be necessary.
- **1988 Lease Amendment.** In 1988, the U.S. leased back approximately 709 acres for the Francisco Manglona Borja / Tinian International Airport (TNI) and expansion land north of the airport back to the Commonwealth Ports Authority for use as a public airport. The 1988 leaseback agreement allowed for future military use, future joint use, and modification or termination of the leaseback agreement as necessary to support defense operations.
- **1994 Lease Amendment.** In 1994, the U.S. declared approximately 1,245 acres of lease property south of TNI, including the area surrounding the Port of Tinian, as surplus and moved to dispose of the property. Within the 1994 disposal area, the Federal government reserved rights related to the use of San Jose Harbor (i.e., Tinian Harbor), the temporary use of surplus land for military training exercises, and the operation of fuel and utility lines between San Jose Harbor and the remaining leased areas. The 1994 lease amendment also expanded the Exclusive Military Use Area by approximately 3,312 acres through the redesignation of Lease Back Area lands north of Dankulo Beach Road. Under the 1994 Lease Amendment (Article 1, Section G), “permanent improvements may be permitted on the Premises with the prior written consent of the U.S.”
- **1999 Lease Agreement.** In 1999, the U.S. terminated the 1988 lease-back agreement with the Commonwealth Ports Authority and conveyed 709 acres comprising TNI property and expansion land north of the airport to the CNMI. The 1999 lease agreement also conveyed approximately 645 acres north of TNI, known as the West Tinian Airport Expansion Land, to the CNMI. In addition, the 1999 lease agreement released leasehold interest in 10 acres at Unai Masalok and lands along public rights-of-way within the 1994 Lease Back Area and disposal area.
- **1999 Conservation Agreement.** Concurrent with the 1999 lease agreement, the U.S. and the CNMI agreed to preserve approximately 970 acres of Lease Back Area lands for wildlife conservation for the Tinian monarch. In accordance with the conservation agreement, and as stated in the U.S. Fish and Wildlife Service Biological Opinion 1-2-98-F-07, the military retains the right to use the Wildlife Conservation Area for low-impact, non-habitat-destructive military training.
- **2019 Lease Agreement.** In 2019, the U.S. and the Commonwealth Ports Authority entered into an agreement for the lease of real property at and adjacent to TNI and at the Port of Tinian. This agreement supports implementation of the Pacific Air Forces Divert project. This initial lease was for a term of 40 years, with a renewal request authorized no later than 5 years prior to the expiration of the lease term. Although this lease includes areas covered by previous lease agreements, this lease does not change, amend, or otherwise alter the

1994 or the 1999 lease agreements. It includes non-exclusive use of taxiways at TNI and easement areas for construction and utilities.

- **2023 Lease Agreement.** In 2023, the U.S. and the CNMI signed an administrative amendment to the 1983 agreement. The administrative amendment grants the U.S. “the right to the reasonable use of roadways as well as the right to improve, construct, maintain and repair roads and utilities owned by the Commonwealth including all supporting facilities and structures. All such improvements shall be made in the easement areas or in such other location authorized by the Commonwealth following coordination with the Commonwealth regarding the improvement, construction, maintenance, and repair.” Under the amendment, the CNMI government “reserves the right to construct improvements including additional roads and utility lines and pipelines and to grant additional nonexclusive easements and rights of way on, in, under, across, through and over the easement areas as it shall determine to be in the public interest, provided that the Commonwealth shall consult with the U.S. prior to granting any such easements and obtain written concurrence of the U.S. that any such additional grants are not inconsistent with the use of the affected easement area by the U.S.”

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