

Civil-Military Coordination Council Operating Charter

To Implement Adaptive Program Management for the Guam Military Relocation Project

Among:

Department of Defense (DoD)

- Commander, Joint Region Marianas – CJRM
- U.S. Marine Corps Activity - Guam – MCA-G

Government of Guam (GovGuam)

- Office of the Governor of Guam – appointed by the Governor, representing the Government of Guam
- Guam Regulatory Agencies – appointed by the Governor, representing the Bureau of Statistics and Planning; Department of Labor; Department of Land Management; Department of Parks, Recreation and Historic Preservation; Department of Agriculture; Guam Environmental Protection Agency; Department of Public Health and Social Services; and other GovGuam regulatory authorities
- Guam Utilities/Infrastructure – appointed by the Governor, representing the Consolidated Commission on Utilities, Department of Public Works, Guam Waterworks Authority, Guam Power Authority, and Port of Guam

Federal Agencies

- U.S. Department of Interior, Office of Insular Affairs – DoI (OIA)
- U.S. Department of Interior, National Park Service – DoI (NPS)
- U.S. Department of Commerce, National Oceanic and Atmospheric Administration/National Marine Fisheries Service – NOAA/NMFS
- U.S. Department of Interior, U.S. Fish and Wildlife Service, Ecological Services – USFWS ES
- U.S. Environmental Protection Agency – USEPA
- U.S. Department of Agriculture, Animal Plant Health Inspection Service – USDA APHIS
- U.S. Department of Transportation, Federal Highway Administration – DoT FHWA

Attachments:

- Appendix A: Adaptive Program Management
- Appendix B: Supplemental Dispute Resolution Guidance

I. Introduction

- a. To fulfill U.S. Government national security and alliance requirements in the Western Pacific region, DoD has proposed the development and construction of facilities and infrastructure on Guam and in the CNMI to support the Marines and their dependents relocating from Okinawa to Guam; the construction on Guam of a new deep-draft wharf with shoreside infrastructure to support a transient nuclear powered aircraft carrier (CVN); and the development of facilities and infrastructure on Guam to support relocating Army soldiers and their dependents to establish and operate an Army Air and Missile Defense Task Force (AMDTF).
- b. In the September 2010 Record of Decision (ROD), the Department of the Navy (DoN) decided to implement an Adaptive Program Management (APM) mitigation measure. This APM mitigation measure will allow the DoN to revise construction tempo and adjust sequencing of construction activities to directly influence workforce population levels and indirectly influence induced population growth before significant environmental impacts¹ occur or infrastructure capabilities are exceeded.
- c. As a consequence of the changes to the proposed action, the DoD has decided to expand the scope of the ongoing Supplemental Environmental Impact Statement (SEIS) analyzing the effects of the construction and operation of a live-fire training range complex on Guam to add those actions that may materially change as a result of the Roadmap Adjustments. These added actions include a main cantonment area of sufficient size and layout to provide military support functions, including family housing, and the construction of utilities and infrastructure to support the range complex, main cantonment, and housing.
- d. The September 2010 ROD further provides that the DoN will implement the APM mitigation measure through creation of a Civil-Military Coordination Council (CMCC). The ROD documented the commitment of the Department of Defense (DoD) to fully participating in the Council and considering its advice and recommendations in adjusting the pace and/or sequence of military construction projects.
- e. The September 2010 ROD further provided the Council's Initial Operating Charter, and established an approach for the Council members to draft and implement a Final Operating Charter (Charter). Consequently, the Council has drafted this Charter adhering to the guidance set forth in the September 2010 ROD for the Guam and CNMI Military Relocation.
- f. Subsequent to the September 2010 ROD, the Department of Defense and the Government of Japan jointly announced on April 26, 2012, adjustments in the 2006 Realignment Roadmap Agreement to relocate U.S. Marine Corps forces from Okinawa, Japan to Guam (hereinafter "Roadmap Adjustments"). The Roadmap Adjustments

¹ The term "environmental impacts" is inclusive of cultural resource impacts.

reduce the number of military personnel and delay the timing from the original realignment plan.

- g. Section IX of the Charter provides a method to amend the Charter, if necessary, based on the findings and conclusions in the SEIS and ROD. The DoD and other signatories continue to recognize the benefits associated with establishment of the CMCC, and consider the CMCC to be integral to successful coordination among the stakeholders related to the relocation of Marines to Guam.
- h. For the purposes of this document, the activities described in items (a) through (g) shall be referred to as the “military relocation”.

II. Purpose

- a. The primary purposes of this Charter are twofold: (1) creation of a CMCC; and (2) development of the Adaptive Program Management (APM) framework, which will allow DoD to revise construction tempo and adjust sequencing of construction activities on Guam to directly influence workforce population levels and indirectly influence induced population growth before significant environmental impacts occur or infrastructure capabilities are exceeded.
- b. Relevant to implementation of the APM framework, the basic functions of the CMCC are to: (1) gather, share, and analyze data; (2) coordinate discussion among DoD, GovGuam, and federal agencies regarding resources and infrastructure on Guam affected by the military relocation effort; and (3) develop advice and recommendations to manage current and future DoD construction activity and other actions undertaken by GovGuam or federal agencies associated with the military relocation.
- c. This Charter fulfills the commitments made in the 2010 ROD for the Guam and the CNMI Military Relocation Environmental Impact Statement (EIS).
 - 1. DoD commits fully in the ROD to implementing the APM mitigation measure to avoid and/or reduce significant environmental, utility, and social services impacts and overstressing Guam’s infrastructure, to using APM to control construction pacing and sequencing, and to working with Guam and federal representatives to implement the CMCC.
 - 2. In accordance with the ROD, DoD is committed to implementing its construction program to support the proposed military relocation actions on Guam in a manner that will avoid and/or reduce significant environmental, utility, and social services impacts or exceed existing infrastructure limitations.
 - 3. Implementation of the APM mitigation measure will allow DoD to revise construction tempo and adjust sequencing of construction activities to directly influence workforce population levels and indirectly influence induced population growth before significant environmental impacts occur or infrastructure capabilities

are exceeded. APM is a management approach that involves establishing infrastructure system and environmental resource baseline conditions, estimating critical impact thresholds, monitoring system capacities and construction, tracking construction impact trends, and periodically reporting advice and recommendations to modify the Guam military relocation, public and private sector construction programs to avoid or reduce significant environmental, utility, and social services impacts.

4. APM is being applied due to the high degree of uncertainty and variables regarding the timing and funding of military construction, the levels of public and private development investment, and the potential impacts of those actions on Guam's environment, public health, utilities, and social services.
5. Scope. APM will be applied as necessary to address the direct, indirect, and cumulative construction impacts of the military relocation, and will include public and private construction, as well as military construction². Public and private construction will take place during the same time as the military relocation, will compete for the same resources, such as the port, drinking water and wastewater, and labor, and will also contribute to impacts to the environment, public health, utilities, and social services.
6. For areas of concern that are not within the scope of APM, as described in this Charter, the Council/Council Working Group (CWG) shall defer recommendations to the appropriate agency (or regulatory authority) for further coordination and discussion.
7. APM requires the coordinated efforts of multiple agencies. This Charter lays out the roles, responsibilities, and operating parameters of the participating agencies in the implementation of APM.

III. Civil-Military Coordination Council Membership and Structure

The membership and structure of the CMCC that will be used to implement APM is outlined in this section. Consistent with the 2010 ROD, the CMCC and its sub-bodies shall be advisory only and each agency participating in the CMCC or its sub-bodies shall retain its own decision making and regulatory authority.

a. Membership

The CMCC shall consist of the following number of representatives from the listed agencies or entities. The CMCC may recommend, as necessary and appropriate, that the DoN appoint additional members to the Council.

² Such cumulative impacts are focused on the collective impacts of current and future actions.

DoD

- Commander, Joint Region Marianas – CJRM -- (1)
- U.S. Marine Corps Activities - Guam – MCA-G -- (1)

GovGuam

- Office of the Governor of Guam – appointed by the Governor, representing the Government of Guam -- (1)
- Guam Regulatory Agencies – appointed by the Governor, representing the Bureau of Statistics and Planning; Department of Labor; Department of Land Management; Department of Parks, Recreation and Historic Preservation; Department of Agriculture; Guam Environmental Protection Agency; Department of Public Health and Social Services; and other GovGuam regulatory authorities -- (2)
- Guam Utilities/Infrastructure – appointed by the Governor, representing the Consolidated Commission on Utilities, Department of Public Works, Guam Waterworks Authority, Guam Power Authority, and Port of Guam -- (1)

Federal Agencies

- U.S. Department of Interior, Office of Insular Affairs – DoI (OIA) -- (1)
- U.S. Department of Interior, National Park Service – DoI (NPS) -- (1)
- U.S. Department of Commerce, National Oceanic and Atmospheric Administration/National Marine Fisheries Service – NOAA/NMFS -- (1)
- U.S. Department of Interior, U.S. Fish and Wildlife Service, Ecological Services – USFWS ES -- (1)
- U.S. Environmental Protection Agency – USEPA -- (1)
- U.S. Department of Agriculture, Animal Plant Health Inspection Service – USDA APHIS -- (1)
- U.S. Department of Transportation, Federal Highway Administration – DoT FHWA (1)

b. Structure

The CMCC structure shall be organized into three basic sub-elements with associated roles and responsibilities as follows:

- Co-Chairs
- Council (signatory organizations)
- Council Working Groups

1. Co-Chairs

The CMCC is co-chaired by

- Commander, Joint Region Marianas (or designee)
- Governor of Guam (or designee)

2. Council

The focus of the CMCC shall be coordination of military, public, and private construction activity on Guam resulting from the military relocation effort and on development of advice and recommendations to execution agencies/entities regarding measures to avoid or reduce significant environmental impacts, measures to avoid exceeding utility infrastructure capacity, and measures to avoid or reduce adverse impacts on social services associated with construction activities resulting from the military relocation. Council will take into consideration recommendations from the CWGs. Recommendations are made to DoD, the Government of Guam, and/or the appropriate federal agency for action, as further described in Section V.

3. Council Working Groups

The following CWGs will address key issue areas of concern:

- Construction
- Utilities
- Cultural and Natural Resources
- Transportation
- Housing

The CMCC may establish additional CWGs to address these and other areas of concern brought forward in the future regarding the military relocation.

- a) The membership of a CWG shall be comprised of local and federal government agency representatives only as solely determined by the Council. CWG membership shall include representation by government agencies with appropriate expertise and/or regulatory authority and may include third party non-Council governmental entities with additional appropriate expertise. For further guidance, see Section VIII General Provisions, subparagraph (j). The expectation is that not all working groups may be active throughout the buildup and may be involved as needed. A CWG may be established and be active for a period and/or may be established so the CWG can identify/plan how and when it is necessary to engage on issues.
- b) Each CWG will have both a DoD and Government of Guam point of contact, and a federal point of contact, as appropriate. Each CWG will also have a Chair or Co-Chairs. CWG Chairs/Co-Chairs will be determined by the Council.
- c) **Construction CWG Analysts**

The Construction CWG Analysts will be determined by DoD and the Government of Guam. They will include representatives from:

- NAVFAC Marianas
- Joint Guam Program Office
- Guam Department of Public Works
- Others, as needed

d) These CWGs and/or future CWGs will address key issues identified in the National Environmental Policy Act (NEPA) process and Biological Opinions, which may include, for example, socio-economic, housing, cultural resources, natural resources (fresh water, soils, coral reefs/marine resources, terrestrial), environment (air quality, storm water, permitting), public health, education, labor, health and social services, infrastructure (power, water, wastewater, solid waste), transportation (roads, seaports, airports), and customs/biosecurity/invasive species inspections.³

c. Roles and Responsibilities.

1. Co-Chairs

The primary responsibilities of the Co-Chairs are to provide leadership to the Council and to hold public update meetings as follows:

- a. Convene and facilitate Council meetings
- b. Oversee the implementation of this Charter
- c. Recommend resolutions at the Council level (see Dispute Resolution Flow Chart in Appendix B).

2. Council Members

The primary responsibility of the CMCC is to provide an integrated perspective, considering the significant direct, indirect, and cumulative construction-related impacts and military, public and private construction activity resulting from the military relocation, and make recommendations to DoD, the Government of Guam and appropriate federal agencies with goal of identifying measures to avoid or reduce potentially significant environmental impacts, measures to avoid exceeding utility infrastructure capacity, and measures to avoid and/or reduce adverse impacts on social services associated with construction activities resulting from the military relocation before planned projects are initiated. Adjusting the pace and/or sequencing of all on-island construction are major considerations to be addressed by the Council. The Council will take into consideration recommendations from the CWGs. Recommendations are made to DoD, the Government of Guam, and/or the appropriate federal agency for action, as further described in Section V.

³ The Biological Opinion’s conservation measures to minimize and offset project impacts include CWG level coordination to identify a system of reporting, monitoring and threshold metrics that can be used to guide the appropriate level of brown tree snake interdiction associated with the military relocation

Council Members will:

- a. Establish CWGs in key issue areas of concern. At a minimum, the Council will establish and maintain CWGs to address (1) biosecurity/invasive species inspections; (2) utilities – water and waste water; and (3) transportation – roads and ports.
- b. Establish CWG Chair(s) and identify participating agencies. Ensure there is coordination between those groups by identifying potential impacts that affect more than one CWG.
- c. Provide an integrated, island-wide perspective on concerns and recommendations raised by the CWGs to ensure impacts are comprehensively addressed.
- d. Make formal recommendations to DoD, the Government of Guam, and/or appropriate federal agency, based on the recommendations of the CWGs, regarding the pace and/or sequencing of construction, before that construction occurs to avoid or reduce potentially significant environmental, utility, and social services impacts. Recommendations are further described in Section V.
- e. Address monitoring needs elevated from the CWGs, per Section IV.
- f. Address disputes elevated from the CWGs.

3. Council Working Groups

The primary responsibility of the CWGs is to develop advice and recommendations on measures to avoid or reduce potentially significant environmental, utility, and social services impacts, and measures to avoid exceeding infrastructure capacity associated with construction activities resulting from the military relocation. The process for developing recommendations is briefly outlined below. Specific guidance is provided in Appendix A.

- a) Identify key indicators and data sets for potentially significant impacts associated with the construction phase of the military relocation and induced population growth.
- b) Identify levels of potentially significant impacts, or “trigger” points.
- c) Analyze trends and make predictions based on information from the Construction Analyses Report (CAR) and other sources.
- d) Share trends analyses with the Construction CWG Analysts on a regular basis.
- e) Develop recommendations on measures to avoid and/or reduce potentially significant environmental, utility, and social services impacts associated with the

construction phase of the military relocation and induced population growth, before those impacts occur.

- f) Recommendations will include specific actions, responsible entities, and timeframes for action.
- g) CWGs will present to the Council on a periodic basis, but no less than twice annually, as determined by the Council, an update on progress within each CWG in response to DoD's CAR. CWG updates to the Council may be made in person or in writing to facilitate the ease of reporting. If presented in person, a written record of the update shall be submitted by the CWG for the record.

h) Construction CWG Analysts

The primary responsibility of the Construction CWG Analysts is to collect, analyze, and disseminate information on the anticipated impacts associated with the construction phase of the military relocation, non-military construction, and induced population growth. These analyses will be presented to the Council and CWGs for review and evaluation with sufficient lead-time to provide recommendations. The CAR is the essential input to the CWG trend analyses that will determine whether construction impacts are approaching an unacceptable trigger point. The process for analyzing this data is briefly outlined below.

- 1) At each Council meeting, Construction CWG Analysts, the Government of Guam, and appropriate federal agencies will present a written account to the CMCC on the overall military relocation, other DoD development activities on Guam, and all reasonably foreseeable public and private development to provide an understanding of the full scope of anticipated construction activity on Guam. Participants reviewing or receiving proprietary information shall refer to Section VIII General Provisions, subparagraph (c) for further guidance on safeguarding proprietary and other sensitive or confidential information.
- 2) DoD and the Government of Guam will share their publicly available project "out-year" planning, even if this project planning is projected and subject to change.
- 3) Construction CWG Analysts will present to the Council and CWGs information and analysis, including the CAR, provided by the Construction CWG. In order to maximize the efficiency of reviews and recommendations, projects will be grouped together based on the timing of solicitation and presented in sets (of projects) at least 6 months prior to the start of construction solicitation. Construction CWG Analysts will make every effort to provide these project sets every 6 months. When information is available, DoD is also encouraged to provide information and analysis for projects greater than 12 months in the future following the passage of the National

Defense Authorization Act (longer timelines for Council/CWG review of the out-year projects will be allowed in this case). In order to maximize efficiency of reviews and recommendations, Construction CWG Analysts will avoid providing project information more frequently than every 6 months unless, because of unforeseen circumstances, project start dates must be moved up and are projected to begin earlier than 6 months in the future.

- 4) Construction CWG Analysts, in collaboration with the CWGs, will continue to collect and update all available information on planned military, public, and private development, including population growth and anticipated potentially significant environmental, utility, and social services impacts. These updates will be contained in the CAR and are the primary mechanism relied upon by the Council and CWGs to evaluate the impacts of proposed project.
- 5) CWG Analysts will present the potentially significant environmental, utility, and social services impacts for analysis based on the CAR for use by the CWGs.
- 6) Construction CWG Analysts will consider the results of other DoD performance-based mitigation measures in developing the CAR. These “other mitigation measures” are DoD’s ROD commitments beyond APM, as well as DoD mitigation measures on other military projects outside the scope of the Guam and the CNMI Military Relocation EIS.
- 7) In an iterative process, Construction CWG Analysts will incorporate the trends analyses developed by CWGs into their CAR. Trends analyses are discussed under the “Council Working Groups” section above.
- 8) Construction CWG Analysts will provide the CAR on a geographic basis as agreed upon by the Council.
- 9) Construction CWG Analysts will identify the targeted construction start date for each development project.
- 10) DOD will collaboratively schedule and conduct CWG workshop(s), as appropriate. The first workshop will focus on the CAR process and template to establish a suitable CAR working example, which is critical to APM implementation.

IV. Monitoring and Data Collection

APM is predicated on data collection and monitoring.

- a. The CWGs will be responsible for identifying data sources necessary to monitor the condition of the indicators discussed above.

- b. To maximize efficiency, CWGs will seek to utilize existing data sets collected through the process of established agency operations.
- c. If a CWG identifies a crucial data gap, the CWG will raise that issue to the Council per the Basic Operating Parameters in Section VI of this Charter.

V. Recommendations (Refer to Figure 1)

Recommendations can be made regarding measures to avoid and/or reduce potentially significant environmental impacts, measures to avoid exceeding utility infrastructure capacity, and measures to avoid or reduce adverse impacts on health and social services associated with construction activities/practices resulting from the military relocation. These recommendations may affect pace and/or sequencing of ongoing or future construction. Independent of matters affecting the pace and/or sequencing of construction, recommendations may also address the coordination of military, public, and private construction activities resulting from the military relocation effort. These types of recommendations are discussed in further detail in Appendix A.

a. Process for Making Recommendations

The process for making recommendations is shown on Figure 1 CMCC Recommendations and described below:

1. Recommendations are generated within individual CWGs.
2. Any CWG recommendation must be advanced to the Council for consideration. Refer to Figure 1 CMCC Recommendations flowchart and Section VII Dispute Resolution Procedures.
3. The Council will determine whether to make the recommendation to DoD, the Government of Guam, and/or the appropriate federal agency for consideration.

b. Striving for Consensus

The Council and CWGs will strive for consensus when making recommendations. If irresolvable differences arise, the Council and individual CWG members will use the dispute resolution process outlined in Section VII. Consensus is defined in Section VIII General Provisions.

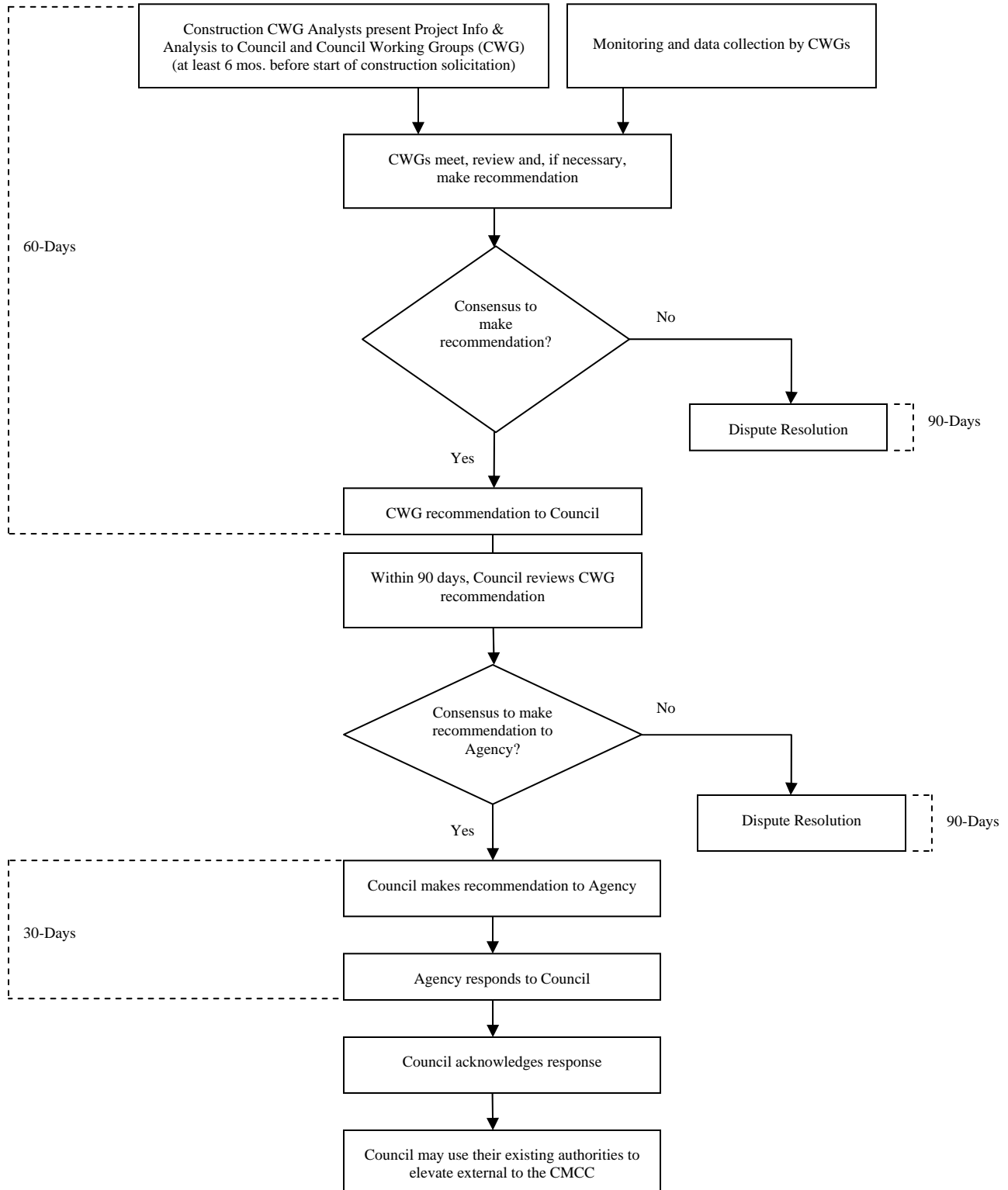
c. Response to Council and CWG Recommendations

At the time it makes a recommendation to an agency, the Council will request the agency report back to the Council within 30 days of receiving a recommendation. In its report to the Council, the agency will report on whether or not the recommendation was accepted. If the Council's recommendation was accepted, the agency will report on how the recommendation was or will be implemented. If the recommendation was not accepted,

the agency will provide the reasons for not following the recommendation. The Council members may use their existing authorities to elevate external to the CMCC if the agency response was not accepted by the Council. If the agency response is accepted, the Council will follow up with the agency.

FIGURE 1: A flow chart of the CMCC structure and recommendation process is included below.

CMCC Recommendations



VI. Operating Parameters of the Council and CWGs

a. Basic Operating Parameters

1. The CMCC is established to facilitate implementation of APM, per DoD's ROD.
2. The CMCC and the processes whereby it operates neither creates any new authorities, creates a new mechanism for regulatory enforcement, nor establishes limitations on the existing authorities of CMCC.
3. Each member of the Council or CWGs shall retain its own decision-making and regulatory authority.
4. When a valid priority for funding exists (e.g., critical data or analyses requirement beyond the CWG capability), the CWG will first look for existing appropriate funding sources and authorities from agencies comprising the CWG. If none are available, the CWG will elevate the requirement to the Council, which will review the requirement, and if valid as a priority will look for existing appropriate funding sources and authorities among the Council membership and/or other non-Council membership sources as appropriate. If none are available, the Council will recommend that the DoD incorporate the non-availability of any funding authorities into a justification for elevation through DoD channels, Office of Management and Budget or Congress where appropriate to try to obtain authorization and funding allocation.

b. One Guam, Green Guam⁴

1. Deliberations and recommendations made by the CMCC (Co-Chairs, Council Members, Construction CWG Analysts, and CWGs) will be made in consideration of and with the intent to support, to the extent possible, DOD's "One Guam" and "Green Guam" initiatives which are designed to reduce and/or offset adverse impacts of the buildup on Guam's community, culture, and environment.
2. The "One Guam" initiative commits DoD to improving the quality of life for the civilian and military people of Guam. The Department of Defense has secured, and will continue to seek, funding for infrastructure upgrades associated with the military buildup, and will continue to advocate for federal investment in Guam's other socio-economic needs.
3. The "Green Guam" initiative commits DoD to developing the most energy efficient infrastructure possible and supporting Guam's efforts to develop sustainable and

⁴ "One Guam, Green Guam" describes DOD's approach to the Guam military buildup as detailed in Under Secretary of the Navy Robert O. Work's letter of Feb 7, 2011 to Gov. Eddie B. Calvo.

renewable energy projects. DoD will also work closely with relevant utilities, Guam agencies, and federal agencies to secure necessary funding for “green” projects.

c. Engagement with the Public

Council meetings will be open to the public to observe, to the extent permissible by law. Discussions for making recommendations will be limited to Council members. CWG meeting results will be reported out at the Council meetings. As permissible by law, CWG meetings are limited to CWG members only. For further guidance, see Section III. a. Structure and Membership, subparagraphs (3) Council Membership and (5) Council Working Group Membership.

d. Timing and Frequency of Meetings

1. CWGs shall meet as necessary to successfully track trends and develop recommendations to present to the Council. The Council shall strive to meet on a quarterly basis or more frequently as necessary. The Council and CWGs shall be prepared to meet on short notice to address critical, time-sensitive recommendations.
2. While in-person meetings are always preferable, Council and CWGs will make maximum use of best available communication technology, e.g., email, conference calls and video teleconferencing, as appropriate, to maximize effective agency participation and outcomes, and minimize agency costs. Meetings will be scheduled (day and time) to accommodate the broadest number of necessary participants.

e. Administrative Matters

Commander, Joint Region Marianas (CJRM), with the assistance of the Joint Guam Program Office (JGPO) Forward, shall be responsible for administrative matters associated with operation of the Council and CWGs, including, but not limited to, maintaining accurate listings of relevant Council and CWG representatives, taking, maintaining, and distributing Council meeting notes and maintaining CMCC records. CWG Chair(s) shall be responsible for taking and distributing CWG meeting notes, and submitting such meeting minute notes to the CJRM or a designated DoD representative for CMCC records.

VII. Dispute Resolution Procedures

Members shall strive to resolve disagreements or disputes through consensus at the lowest level possible and elevate only if resolution cannot be obtained.

a. Disputes may arise at several levels within the Council and CWGs:

1. Within a CWG
2. Between CWGs
3. Within the Council

b. The following time limits are established for each level of dispute resolution:

1. Local Level/CWGs – 30 calendar days
 2. Council level – 30 calendar days
 3. Co-Chairs level – 30 calendar days
 4. External elevation, as necessary
- c. The time limits begin upon written notice articulating the dispute issue to the partner entity at the appropriate personnel level.
- d. Efforts to resolve disagreements or disputes shall not affect underlying agency jurisdiction or regulatory authority. Nothing in this dispute resolution procedure precludes any other traditional or nontraditional approaches to dispute resolution. However, implementing the Council/CWG dispute resolution procedure is intended to resolve issues quickly, and to maintain constructive working relationships. The specific dispute resolution tools are intended to be expeditious, practical, respectful, and accessible.
- e. Agencies deciding to elevate areas of disagreement through external elevation should notify the Co-Chairs of their intent to do so, so that all agencies have the opportunity to brief the issue to their higher level Command/Agency.
- f. For more guidance on the dispute resolution process, refer to Appendix B Supplemental Dispute Resolution Guidance.

VIII. General Provisions

- a. Governing Document. In the event of a conflict between the Charter and any of the Appendices thereto, the terms of the Charter prevail.
- b. This Charter is not intended to, and does not affect any legal authority of any of the participating agencies. Agency participation in this process is to provide recommendations to the Council. Participation does not imply approval of any or all actions otherwise subject to regulation. Accordingly, participating agencies reserve all legal rights and authorities, including those related to inspection, enforcement and permitting that may arise.
- c. Documents, data, maps, and other information provided pursuant to this Charter may be pre-decisional (intra-agency or inter-agency memoranda or letters), proprietary (including confidential business information), privileged, protected, or otherwise prohibited from disclosure pursuant to applicable law. Proprietary information is information from government agencies or businesses that is identified as confidential through processes established in regulations specific to each entity. A Signatory Agency will clearly identify in writing any of the aforementioned categories of documents at the time of their disclosure and if any such information is disclosed orally it will be clearly memorialized in writing within a reasonable time from when it was disclosed, and it will be protected according to applicable regulations. Signatory Agencies will not disclose, copy, reproduce or otherwise make available in any form whatsoever to any other person, firm, corporation, partnership, association or other entity information designated as proprietary

or confidential without explicit consent of the Signatory Agency who produced the document, except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. 552), or as otherwise authorized by law. If authorized for disclosure, the disclosing party is encouraged to notify other CMCC members as a courtesy. CMCC and CWG participants will be asked to sign and comply with non-disclosure forms for access to such data and discussions.

- d. A Signatory Agency's participation in the APM process is not equivalent to serving as a cooperating agency as defined by regulations promulgated by the Council on Environmental Quality, 40 C.F.R. Part 1500, which is a separate process established through a formal written agreement from a Signatory Agency to the Federal lead agency.
- e. As required by the Antideficiency Act, 31 U.S.C. Sections 1341 and 1342, all commitments made by Federal agencies in this Charter are subject to the availability of appropriated funds. Nothing in this Charter, in and of itself, obligates Federal agencies to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with agency budget priorities.
- f. The obligations under this Charter of the Government of Guam or its political subdivision are subject to the availability of appropriated funds. No liability shall accrue to the Government of Guam or its political subdivision for failure to perform any obligation under this Charter in the event that funds are not appropriated.
- g. This Charter does not confer or create any right or benefit, substantive or procedural, enforceable by law or equity, by a party against the United States, its agencies, its officers, or any person.
- h. The Council does not have independent governmental authority nor does it perform governmental functions, consistent with the provisions of 31 U.S.C. 1346(a).
- i. APM will not supersede regulatory roles and agreements between DoD, Federal Regulatory agencies and the Government of Guam.
- j. The CMCC is comprised of full-time or permanent part-time local and federal government agency employees and therefore does not constitute an advisory committee for purposes of the Federal Advisory Committee Act (FACA). Upon request of the CMCC, representatives of non-government entities with special expertise may present technical information only, but shall not provide advice or make recommendations to the CMCC. The CMCC has sole responsibility for developing advice and recommendations.
- k. Nothing herein shall be interpreted to require any member to take any action, advisory or otherwise, that may conflict with the rules, regulations, or procedures of that member's own agency or organization.
- l. If any part, section, or clause herein is found to be in contravention of any statute applicable to the respective parties of this Charter, the invalidity of such part, section, or clause shall have no effect on the remainder of this Charter.

- m. Definition of Consensus: A procedure that relies upon an open-minded search for the best possible solution that all can endorse (albeit with different levels of enthusiasm). The appropriateness of consensus as a way of making decisions stems from the deep-seated conviction that persons should come to decisions in a spirit of unity. As such, this method is more than a procedure; it is an expression of a fundamental attitude. (Wellings, D. (2012). Decision making in the workplace. Cedar Grove, NC: Don Wells Consulting)

IX. Charter Review

The Charter will be reviewed annually, or as required, by the Council, and any changes will be approved by consensus of the Charter signatories.

X. CMCC Evaluation

APM's implementation effectiveness and the subsequent need for any CMCC operating improvements will be reviewed by the Council, at a minimum, annually and approved by consensus of the signatory parties to the Charter.

XI. Termination

The Council and/or CWGs shall cease to function:

- a. Upon completion of final projects associated with military relocation effort as defined in the Guam and the CNMI Military Relocation EIS; or
- b. Upon consensus of the Charter signatory parties; or
- c. 12 years upon signing of the Charter

Signed:

Joint Region Marianas

Tilghman D. Payne, RDML, USN Date
Commander, Joint Region Marianas

Territory of Guam

Eddie Baza Calvo Date
Governor of Guam

U.S. Marine Corps Activity – Guam

Lawrence S. Loch, Colonel Date
Officer-in-Charge

Department of Interior, Office of Insular Affairs

Nikolao Pula Date
Director

National Park Service

Christine S. Lehnertz Date
Regional Director, Pacific West Region

U.S. Fish and Wildlife Service, Ecological Services

Loyal Mehrhoff Date
Field Supervisor

U.S. Environmental Protection Agency, Region 9

Jared Blumenfeld Date
Administrator

National Marine Fisheries Service

Michael D. Tosatto Date
Regional Administrator, Pacific Islands Regional
Office

U.S. Department of Agriculture, Animal Plant Health
Inspection Service, Wildlife Services

Daniel Vice Date
Assistant State Director

U.S. Department of Transportation, Federal Highway
Administration

Abraham Wong Date
Hawaii Division Administrator

Bureau of Statistics and Planning

Lorilee Crisostomo Date
Director

Guam Environmental Protection Agency

Eric Palacios Date
Administrator

Consolidated Commission on Utilities

Simon A. Sanchez II Date
Chairman

APPENDIX A

ADAPTIVE PROGRAM MANAGEMENT

I. Description of Adaptive Program Management

- a. Adaptive Program Management (APM) is described in the Final Environmental Impact Statement for the Guam and Commonwealth of the Northern Mariana Islands, Volume 7: Proposed Mitigation Measures, Preferred Alternatives' Impacts and Cumulative Impacts, Chapter 2, pages 2-51 to 2-64. The description of APM in the main document controls in the event of a discrepancy between that description and the description provided in this appendix.
- b. APM is loosely based on the concept of adaptive management (AM). In principal, adaptive management is a management approach that involves monitoring outcomes of managed activities and improving the management of those activities based on monitoring results. While there are many definitions of “adaptive management,” the Department of Interior describes adaptive management as follows:
- c. Per Department of the Interior, Departmental Manual, 552 DM 1, adaptive management is a decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a ‘trial and error’ process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social and economic goals, increases scientific knowledge, and reduces tensions between stakeholders.”
- d. APM differs from AM in two key ways. First, as noted above, adaptive management historically has not been used to “represent an end in itself”. Rather, AM has been used to provide flexibility in managing an action over a long time frame to implement corrective actions when projected outcomes are at risk. In contrast, APM is being used not only to provide flexibility in how to manage the Program, but also as a way to define the environmental outcome. Additionally, APM has a finite completion date, a relatively short schedule, is subject to multiple influences, and in many cases the baseline condition of infrastructure, environmental conditions, and social services is already degraded. APM, as applied to the military buildup on Guam, is unique in its scope and objectives.
- e. Second, unlike AM which has been used by federal agencies to help identify corrective action if mitigation commitments under the National Environmental Policy Act (NEPA) fail to achieve projected environmental outcomes, APM is being relied upon by DoD as *the key mitigation measure* that was incorporated as an *integral component of the*

proposed Program. Implementation of APM should result in avoiding or reducing more immediate significant environmental impacts or exceedances of infrastructure capabilities on Guam associated with construction personnel and related induced population patterns. As such, the overall success of APM is critical to ensuring the project outcome is environmentally satisfactory, and not just whether an identified alternative is feasible.

- f. Through the NEPA process federal agencies demonstrate how their proposed projects meet local, State, and federal law. As defined in the NEPA regulations, a significant impact includes those impacts based on their context and intensity. Impacts may be associated with public health, safety, historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas, highly controversial, highly uncertain, involve unique or unknown risks to the human environment, may establish a precedent for future actions with significant effects or presents a decision in principal about a future consideration, may adversely affect places, sites, structures or objects listed or eligible for listing in the National Register of Historic Places, scientific resources, that threaten to violate federal, state or local law and/or may adversely affect an endangered species.
- g. Neither the EIS nor the ROD define criteria for determining what level of cumulative impacts are not yet significant, but signal a need for action to avoid and/or reduce potentially significant impacts. Identified “trigger levels” are necessary conditions precedent to avoiding (versus responding to) significant impacts through the implementation of APM, and any other mitigation measure.
- h. A major task of this Charter is to develop the APM Framework (see II APM Framework Guidance) which will be used as the primary mechanism of measuring and or monitoring the overall environmental, utility, and social services impacts of construction associated with the military relocation, including direct, indirect and cumulative. The specific technical, biological, and other environmental metrics, as well as trigger levels used to construct the APM Framework, will be developed by the Council Working Groups (CWGs). An evaluation in accordance with these metrics will help identify whether, and in what time frame, a proposed construction project(s) may result in a significant environmental impact. It is anticipated, consistent with traditional AM, that the APM Framework will be used to: (1) adjust construction activities to accommodate construction related cumulative impacts associated with the overall development and induced population growth; and (2) modify trigger levels and monitoring and other technical tools based on actual results and as information is gathered.
- i. To help ensure timely input from the Council and CWGs, DoD will prepare Construction Analyses Report (CAR) of the potential impacts of proposed construction project(s) based in part on an analysis of the metrics set forth in the APM Framework. The CWGs will evaluate the CAR and recommend to the Council whether the proposed construction should proceed as presented or whether specific proposed mitigation measures, including changing DoD or private construction tempo or sequence, should be implemented.

- j. APM benefits construction program management by maintaining appropriate flexibility and management capacity to adjust for uncertainties of program actions and other events as they become better understood over time, including those program activities that contribute to or improve environmental sustainability and infrastructure capacity to avoid and/or reduce future impacts. APM recognizes the importance of natural, manmade and political variability in contributing to environmental resilience, infrastructure and public service system capacity.

II. APM Framework Guidance

- a. Per the FEIS, effective APM requires the coordinated efforts of multiple agencies (FEIS, Vol. 7, 2-57). Presented below are guidelines for use by the Council Working Groups (CWG) in the development of an APM approach for their specific issue area. The guidelines are intended to be flexible to meet the varying needs of multiple CWGs while also providing a framework for a comprehensive and consistent approach for implementation of APM.
- b. There are five essential elements to the development of an APM approach:
 - 1. Indicator Identification: What impacts are we trying to avoid?
 - 2. Trigger Development and Implementation
 - 3. Data Collection and Monitoring
 - 4. Identifying Response Actions
 - 5. Identifying Responsible Parties

c. Indicator Identification

- 1. The overarching goal of APM implementation is to monitor and adapt the military relocation and private sector construction programs in a manner that does not cause significant environmental impacts or exceed existing infrastructure limitations. The tool should be able to:
 - a) Distinguish, where possible, between significant changes that might be attributable to military construction and associated growth and environmental conditions that existed previously.
 - b) Provide adequate lead-time to implement changes to avoid and/or reduce significant environmental, utility, and social services impacts so that the buildup construction and associated public and private development can occur while avoiding significant impacts.
 - c) Focus on those portions of the existing infrastructure, environmental, and social networks that are currently under the greatest stress and quantify additional demand or impacts occurring due to the buildup construction.
- 2. This management effort should prioritize key indicators and metrics to track changes in APM effectiveness—both positive and negative—and to trigger responses to those

changes that maintain service and minimize significant environmental impact. Triggers should be developed to respond to a variety of changes in island services and conditions with emphasis on potable water and wastewater infrastructure, port throughput capacity, aquatic and terrestrial resources, and various social services, such as medical services, and fire/police response. Importantly, one or a series of overarching triggers should be used to assess the speed and geographic focus of construction. DoD will facilitate the collection and availability of overarching development and population data per Section III of the Charter.

d. Trigger Development and Implementation

1. The purpose of identifying triggers is to determine whether and when the risk of unacceptable impacts is forecast to occur, and to make recommendations on tempo, pacing, and/or project modifications to avoid and/or reduce those impacts. Triggers should target broad-based system assessment rather than day-to-day activities. Included below are the key trigger development considerations. These key considerations correspond to the FEIS, which should serve as a basis for conceptualizing triggers. Developing triggers without linking back to the documented assessment of impacts and mitigation for a given resource may result in conflicting courses of action, duplication of effort, parallel efforts, or gaps in data collection and monitoring. Once each key consideration is accounted for, the next recommended step is to decide on preliminary triggers. The APM Trigger Selection Worksheet⁵ should be considered to refine triggers and supporting metrics and justify their use. CWGs may decide to use alternate approaches to develop triggers; however, a critical review should find that a proposed trigger is linked to the FEIS or the reasons for any major deviation from the FEIS/ROD. Notional examples of APM triggers are included in the FEIS, Volume 7, Chapter 2, page 59. The following key trigger considerations should be the overall starting point in developing a trigger proposal; additional references may also be useful.
 - a) Review and consider the FEIS resource description and data sets, which are located in the first section of each resource chapter, including cumulative effects in Volume 7, Chapters 3 and 4. This review should result in the preliminary identification of triggers and supporting data.
 - b) Review and consider the FEIS Environmental Consequences and “Determination of Significance”. This review should result in the identification of target thresholds, both qualitative and quantitative.
 - c) Review and consider the FEIS/ROD summary findings for “Construction” impacts by region and/or installation, including cumulative effects. This step will identify, in most cases, impacts unique to construction activities.

⁵ This worksheet was presented at the April 5-6 2011 APM workshop in Guam and is available from the CMCC NAVFAC Marianas Construction CWG Analyst.

- d) For item three above, focus on significant impacts (SI) and significant impacts mitigable to less than significant (SI-M).
 - e) Review and consider the Final NAVFAC Pacific “Mitigation Monitoring and Tracking Plan for the Guam and CNMI Military Relocation Program, June 2011”.
 - f) CWGs should consider:
 - 1) Systems or networks susceptible to impacts requiring assessment
 - 2) Individual and overarching metrics and/or triggers
 - 3) Sharing information across CWGs
 - 4) Responsibilities
 - 5) Data needs (baseline and ongoing)
 - 6) Qualitative information
2. The process outlined above should guide further development, including: (1) identification of the parties responsible for taking action; (2) specific action items that must be implemented when particular trigger thresholds are exceeded; and (3) confirmation, where possible, that the triggers are effective indicators of potential impacts resulting from the buildup itself.

e. Data Collection and Monitoring

1. Data collection, monitoring, and trend analysis are key to the successful implementation of APM. Construction CWG Analysts will be responsible for collecting development and population growth data, and CWGs will be responsible for identifying key triggers and data needs in their issue areas. (Refer to Section III subparagraph (b) for Construction CWG Analysts and CWG Roles and Responsibilities). CWGs are encouraged to use existing data sources to the greatest extent possible. If crucial data gaps exist, the CWG will follow the Basic Operating Parameters (as defined in Section VI of the Charter) to determine whether and how to obtain the data needed.
2. Development and implementation of the management approach requires that the baseline condition of the resource be assessed and documented. Establishing the baseline condition will enable the identification of impacts or trends, both positive and negative, resulting from the buildup. Identify areas of concern and thus help to prioritize improvements and the allocation of resources. The baseline conditions for all overarching triggers need to be established as soon as possible to accurately characterize the pre-buildup condition. Valuable baseline information about each resource is available in the FEIS under the “Affected Environment” section of each resource chapter and in the FEIS appendices (Vol 9, Appendices D through N).
3. Construction CWG Analysts, in coordination with the CWGs, will be responsible for the following data collection and distribution:

- a) Providing forecasts of projected levels of military, public, and private construction activities on Guam and the projected supply and material demands associated with those construction activities.
 - b) Monitoring military, public and private construction contracting activity, associated workforce levels, and population growth.
 - c) Monitoring workforce related issues, such as development of workforce housing camps or complexes, workforce transportation, and workforce medical care.
 - d) Distribution of relevant data and analysis to affected stakeholders.
4. Examples of data collection and monitoring that the CWGs will be responsible for include:
- a) Monitoring the impact of military, public, and private construction activity upon natural resources, utility capacity, and social services on Guam.
 - b) Providing forecasts of projected levels of capacity for various utilities, infrastructure, or public services on Guam.
 - c) Distribution of relevant data and analysis to affected stakeholders.

f. Identifying Response Actions

1. Per the FEIS, there are three general types of action responses/recommendations considered at the CWG level:
 - a) Adjust timing and/or sequencing of future construction.
 - b) Adjust the timing, sequencing, and/or construction practices of development already underway.
 - c) Implement actions that do not affect the timing and sequencing of construction. For example, these may include infrastructure improvements or adjustment in construction management processes.
2. The FEIS includes this specific language:
 - a) *Slowing construction tempo.* Construction tempo refers to the overall pace of proposed DoD construction on Guam and regions of Guam (i.e., Apra Harbor, Andersen AFB, and Finegayan). DoD would slow the timing and execution of short term (0 to 3 months), mid-term (3 to 12 months), or long-term (12 to 24 months) construction contract awards in response to known infrastructure limitations and monitoring of data on impacted resources to reduce construction-related population increases and avoid and/or reduce impacts to environmental resources served by utilities systems (i.e., ground water, surface waters, and ocean waters).

- b) *Adjusting construction sequencing.* Construction sequencing involves redirecting the sequence of construction to projects that require fewer construction workers (e.g., re-sequencing from horizontal to vertical projects that require fewer workers), thus controlling the workforce population rate of increase. Construction sequencing would also include the regional redistribution of construction projects to avoid the concentration of construction activities with the potential to overburden local utilities systems at a particular location (FEIS, Vol. 7, 2-54).
3. Other Considerations. When APM mitigation measures increase or sustain infrastructure capacities, the CMCC will recommend prioritizing the use of that capacity by the provider for future construction activities through coordination amongst CMCC members.

g. Identifying Responsible Parties

1. Responsible parties, for the purpose of APM trigger development and implementation, can be an individual federal or local agency or a group of agencies committed to coordinate APM activities. “Responsible parties” under APM is not synonymous with “Action Proponent” under NEPA. Responsible parties may or may not be associated with an agency’s financial commitment to implement triggers beyond agency participation or to fund broader CWG activities. CWGs should consider identifying responsible parties based on factors such as capacity to provide technical expertise, agency mandate, existing programs, fiduciary responsibilities/liability and other similar considerations.
2. Iterative Process. As noted above, the process for implementing APM will be iterative as variables and inputs change over time.

APPENDIX B

SUPPLEMENTAL DISPUTE RESOLUTION GUIDANCE

I. Identification of agency representative

In order to streamline the dispute resolution process, members of the Council or CWG should identify the appropriate representative who will speak for their agency/organization.

II. Timing of Elevation

Within 30 days upon receiving notice to initiate dispute resolution, the receiving agency(ies) involved will:

- a. Notify and schedule the representatives who will resolve the dispute and the staff who will brief them;
- b. Coordinate, develop, and distribute an internal CMCC Dispute Resolution briefing paper.

III. Briefing Paper

- a. A cooperatively prepared briefing paper is a key component of dispute resolution and its elevation. The briefing paper should be sent by the entity initiating dispute resolution to the other involved parties along with a draft agenda. The briefing paper should offer salient information precisely framing the issues requiring resolution.
- b. The briefing paper:
 1. Encourages neutral presentation of issues, rather than polarizing;
 2. Maximizes the likelihood of resolution of at least some of the issues as staff prepare for the elevation;
 3. Ensures that the problem statement is robust, clear, and focused; and
 4. Fosters improved communication.
- c. The briefing paper should be short and will need to be developed quickly—*in 21 calendar days, in most cases, from the date of original notice*. The preferred format for the briefing paper is presented below.
 1. The affected parties' interests, reasoning, issues, and alternatives will be addressed in the briefing paper. An agency shall be identified to take the lead for crafting the briefing paper. A representative from each agency responsible for the development of the briefing paper (a point of contact) should also be identified at this time.

2. Changes to the first draft of the briefing paper shall be incorporated using the “Track Changes” feature in Microsoft Word. A single set of changes will be sent by each agency’s point of contact. The lead agency may either accept the changes, or notate them in a comment box, with this document becoming the second draft. The lead agency shall then distribute the second draft to the contributors, incorporating the requested changes prior to sending a final document to the elevation decision-makers. There may be other iterations as needed, and as the schedule allows.
3. Informal telephone conversations and electronic mail should occur at all stages in support of the development of the briefing paper.
4. The specific timing for reviews, changes, and incorporation of changes may be modified by mutual agreement.

d. Content:

1. Executive Issues:

- a) Provide focused, concise summary statement of the most important issue(s) by the entity initiating dispute resolution, answering the following questions:
 - 1) What are the issues that require resolution?
 - 2) Who are the stakeholders? What are their positions?

2. Background: (Not required if clarification of the main topic is unnecessary)

- a) Include background amplifying data and information
- b) Address only specific need to know information
- c) Incorporate historical data that directly applies to the issue

3. Discussion:

- a) Provide description of the significant issues
 - 1) Clearly state objectives and desired outcomes surrounding the issue
 - 2) Include hard data and facts
 - 3) Address all viewpoints (including opposition) and identify pros and cons for each option/alternative considered: “tell the rest of the story”
- b) Include statement of assumptions and an assessment of risks pertaining to the issue

4. Recommendation:

- a) Conclude point paper with a specific recommended course of action and alternatives
- b) State whether there are stakeholders with dissenting opinions

5. Next Steps:

- a) Resolution—If consensus is achieved, the final resolution shall be summarized.
- b) Describe issues still requiring resolution (if any)
- c) Update briefing paper, as needed, prior to elevating for further discussion

Notes to guide Dispute Resolution Briefing Papers:

- Keep the point paper to two pages or less, preferably a single page.

- Include the date, name and contact information of the CWG/Agency Representative.
- Use Track Changes for all revisions upon receipt of the first draft through final.
- Limit major bullets to three lines or less.
- Limit the number of sub-bullets to two per major bullet.
- Limit sub-bullets to three lines or less.

IV. Dispute Resolution Flow Chart

