

Defendants Katherine Gregory, *et al.*, give notice to the Court and the plaintiffs of the filing of the supplemental Declaration of Joseph D. Ludovici (Ludovici Supp. Decl.), attached as Exhibit A. Mr. Ludovici is the Director of the Joint Guam Program Office in the Office of the Assistant Secretary of the Navy (Energy, Installations, and Environment). Ludovici Supp. Decl., ¶ 1.

Mr. Ludovici states that the Department of the Navy (Navy) has completed the internal review process mentioned in his initial Declaration (Doc. 60-5), which the defendants filed with the Court on May 29, 2011. Ludovici Supp. Decl., ¶ 4. He attests that “the Navy has determined that additional analysis under the National Environmental Policy Act (“NEPA”) is appropriate.” *Id.* As a result, the “Navy will prepare a SEIS [Supplemental Environmental Impact Statement] to re-evaluate live-fire training range complex alternatives, based on application of probabilistic modeling” that he described in his initial Declaration. *Id.* “The Navy intends to begin the SEIS process in early 2012.” *Id.*

Mr. Ludovici also states that the Navy will include scoping as part of the SEIS and that the Navy “is committed to providing opportunities for public involvement consistent with NEPA regulations during the scoping process and throughout the SEIS process for the live-fire training range complex.” *Id.*, ¶ 5.

The Navy expects the SEIS to take a minimum of two years to complete after the process formally commences in early 2012, and the “Navy will complete the SEIS for the live-fire training range complex before any final decision on the location of the range training complex is made.” *Id.*

Mr. Ludovici also confirms the continuing accuracy of statements in his earlier Declaration, which informed the Court that the President’s proposed budget for Fiscal Year 2012 (FY 12) “did not propose funding for acquisition of land for the live-fire training range complex” and that the Navy “did not anticipate being able to undertake any construction-related ground disturbing activities in the Route 15 area” in FY 12. *Id.*, ¶ 6.

The Supplemental Declaration of Mr. Ludovici directly impacts the pending motion to dismiss (Doc. 77), currently set for hearing on December 12, 2011 (Doc. 81). The Navy continues to maintain, as stated in the Record of Decision and as presented to the Court, that there is no final agency action with regard to the selection of a site for the training range complex. The SEIS will further inform the agency decision-maker prior to determining the final agency action regarding siting of the live-fire training range complex.

The defendants realize that information regarding the Navy's determination, as discussed by Mr. Ludovici, to prepare the SEIS must be presented promptly to the Court and to counsel for the plaintiffs, especially in light of the November 21, 2011, date for the plaintiffs' response to the motion to dismiss. The Court may decide that the hearing date on the motion to dismiss should remain on the calendar, but the defendants also recognize that the Court may wish to hold a status conference with counsel for all parties in advance of the hearing date to discuss the impact of the Navy's decision to prepare a SEIS on the briefing schedule and the hearing date. Regardless of whether and how the litigation proceeds, the supplemental NEPA process ensures that no decision will be made to select a site for the live-fire training range complex on Guam for at least two years.

Respectfully submitted this 15th day of November, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that, on November 15, 2011, I electronically filed the “Defendants’ Notice of Filing of Supplemental Declaration of Joseph D. Ludovici” with the Clerk of the Court using the ECF system, which automatically will send email notification to the attorneys of record listed below:

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

Guam Preservation Trust, et al.,

Plaintiffs,

v.

Katherine Gregory, et al.,

Defendants

Case No.: No-CV-10-00677-LEK- RLP

.

DECLARATION OF JOSEPH D. LUDOVICI

I, **Joseph D. Ludovici**, declare:

1) I am the Director, Joint Guam Program Office (“JGPO”), Office of the Assistant Secretary of the Navy (Energy, Installations and Environment) (“ASN(EI&E)”), in Arlington, Virginia. In that capacity, I have several specific responsibilities, including oversight of planning, programming, communications, environmental assessment and construction for the Defense Policy Review Initiative to relocate over 8,000 U.S. Marines from Okinawa, Japan to Guam (the “Guam Relocation”). I have served as the Director of the JGPO since November 2010.

2) Through my role as Director of JGPO, I have personal knowledge of, and am qualified to attest to, the nature of the Navy’s decision-making process related to the preparation of a Supplemental Environmental Impact Statement (“SEIS”) for the live-fire training range complex to support the Guam Relocation (“SEIS”). My professional background is contained in my previous Declaration filed with this court on May 29, 2011. Declaration of Joseph D. Ludovici (“Ludovici Decl.”), Dkt. No. 60-5, ¶¶ 1-7 (May 29, 2011).

NAVY'S INTENT TO PROCEED WITH A SEIS

3) In my previous declaration I described the internal process Navy was undertaking to determine whether the use of probabilistic modeling to predict surface danger zones (SDZ) on live-fire training ranges warranted additional analysis of environmental impacts at potential range sites. Probabilistic modeling takes into account local geographic conditions and firing practices to more precisely identify land required for a range and adjacent SDZs. Probabilistic modeling has the potential to reduce the size of the SDZ and could affect the assessment of a site's suitability or feasibility for development of the range training complex. Ludovici Decl., ¶¶ 14-22.

4) This process is now complete, and the Navy has determined that additional analysis under the National Environmental Policy Act ("NEPA") is appropriate. The Navy will prepare a SEIS to re-evaluate live-fire training range complex alternatives, based upon the application of probabilistic modeling. The Navy intends to begin the SEIS process in early 2012.

5) Although not required under the NEPA regulations, the first step the Navy will undertake as part of the SEIS process for the live-fire training range complex is scoping—the "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed

action.” See 40 C.F.R. § 1501.7; 40 C.F.R. § 1502.9(c)(4) (which directs agencies to “prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement....”). The Navy is committed to providing opportunities for public involvement consistent with NEPA regulations during the scoping process and throughout the SEIS process for the live-fire training range complex. See 40 C.F.R. § 1506.6. The Navy will complete the SEIS for the live-fire training range complex before any final decision on the location of the range training complex is made.

6) The Navy previously informed the Court that the President’s proposed budget for Fiscal Year 2012 (FY 12) did not propose funding for acquisition of land for the live-fire training range complex. Letter Brief at 3, Case 1:10-cv-00677-LEK-RLP (June 16, 2011). The Navy also stated it did not anticipate being able to undertake any construction-related ground disturbing activities in the Route 15 area in FY 12. Id. Both of these statements remain accurate. No action to acquire property for or construct the live-fire training range complex required to support the Guam Relocation will be undertaken in FY 12. This commitment does not affect execution of the Record of Decision published in September 2010 regarding construction of operational, support, or administrative facilities on federal property including Apra Harbor, Andersen Air Force Base, and Naval Computer and Telecommunications Station Finegayan.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14 day of November, 2011, at Arlington, Virginia.


Joseph D. Ludovici

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GUAM PRESERVATION TRUST,)	No. 1:10-cv-00677-LEK-RLP
et al.,)	
Plaintiffs,)	DEFENDANTS' NOTICE OF
v.)	FILING OF SUPPLEMENTAL
)	DECLARATION OF
KATHERINE GREGORY, Rear)	JOSEPH D. LUDOVICI
Admiral, Commanding Officer, Naval)	
Facilities Engineering Command,)	DATE: December 12, 2011
Pacific, <i>et al.</i> ,)	TIME: 9:45 AM
Defendants.)	COURT: AHA NONOI
_____)	JUDGE: Hon. Leslie E. Kobayashi

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Respectfully submitted this 15th day of November, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that, on November 15, 2011, I electronically filed the “Defendants’ Notice of Filing of Supplemental Declaration of Joseph D. Ludovici” with the Clerk of the Court using the ECF system, which automatically will send email notification to the attorneys of record listed below:

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DECLARATION OF JOSEPH D. LUDOVICI

I, **Joseph D. Ludovici** , declare:

1) I am the Director, Joint Guam Program Office (“JGPO”), Office of the Assistant Secretary of the Navy (Energy, Installations and Environment) (“ASN(EI&E)”), in Arlington, Virginia. In that capacity, I have several specific responsibilities, including oversight of planning, programming, communications, environmental assessment and construction for the Defense Policy Review Initiative to relocate over 8,000 U.S. Marines from Okinawa, Japan to Guam (the “Guam Relocation”). I have served as the Director of the JGPO since November 2010.

2) Through my role as Director of JGPO, I have personal knowledge of, and am qualified to attest to, the nature of the Navy’s decision-making process related to the preparation of a Supplemental Environmental Impact Statement (“SEIS”) for the live-fire training range complex to support the Guam Relocation (“SEIS”). My professional background is contained in my previous Declaration filed with this court on May 29, 2011. Declaration of Joseph D. Ludovici (“Ludovici Decl.”), Dkt. No. 60-5, ¶¶ 1-7 (May 29, 2011).

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Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14 day of November, 2011, at Arlington, Virginia.


Joseph D. Ludovici

