4.11 PROGRAMMATIC AGREEMENT (PA)

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PA-1. *Revise PA to Provide More Public Participation*

Various historic preservation organizations and one individual specifically characterize their primary concerns regarding the Draft PA as the need for "a meaningful and timely voice in the ongoing Section 106 reviews during the development of the Presidio," and the "lack of any meaningful role for consulting parties…as well as the extremely limited provision for public involvement." Commentors also state that the Draft PA gives too much discretion to the Trust regarding land use and mitigation decisions integral to the planning process, and moreover, that these decisions should not be made unilaterally. The commentors request that the Draft PA be revised to include a much stronger role for the consulting parties and the public in making these decisions.

Response PA-1 – The Presidio Trust has carefully reviewed and considered every comment provided in writing and during the consultation sessions and has responded to them through substantive changes or formal alterations to the PA as appropriate. Consulting agencies, including the Advisory Council on Historic Preservation, the California State Historic Preservation Officer (SHPO), and the NPS, have reviewed these changes and signed the final agreement. A signed copy of the PA is provided in Appendix D of the Final EIS.

Examples of the changes made in response to public input are provided in the following sections of the PA:

- Stipulation VI (formerly Stipulation VII): the concern that the Trust might be "delisting" properties from the National Register is addressed;
- Stipulation VII (formerly Stipulation VIII): significant format changes have been made in order to clarify how the Stipulation functions; and
- Stipulation IX (formerly Stipulation X): particular roles for concurring parties have been added in the development of future planning documents, the consideration of certain proposed demolition, and the review of certain proposed new construction that may have an adverse effect on historic properties.

During the consultations on the PA, the Trust emphasized to the consulting parties that meaningful consideration of cultural resource values in future projects is most likely to happen if the public and organizations interested in historic preservation participate and provide input to the Trust at the earliest stages of planning. To this end, the Presidio Trust has and will continue to follow 36 CFR 800.8. This provision encourages federal agencies to "consider their Section 106 responsibilities as early as possible in the NEPA process and plan their public participation, analysis and review in such a way that they can meet the purposes of both statutes [NHPA and NEPA] in a timely and efficient manner." The Trust therefore urges interested preservation organizations to avail themselves of the substantial opportunities to advance the cause of historic preservation offered by this approach.

In addition, the Trust agreed to provide the following notification to the parties concurring in the Final PA (the National Trust for Historic Preservation and Fort Point and Presidio Historical Association):

- Scoping notices for Trust projects that would be subject to Environmental Assessments or Environmental Impact Statements;
- Project documents related to the above notices will be made available for review in the Presidio Trust library;
- Agendas (via email) of regularly scheduled NEPA/NHPA (known as "N^2") review meetings that describe Trust projects that are being considered for a Categorical Exclusion under NEPA; and
- Summary results (via email) of the N^2 meetings.

The Trust believes that use of the NEPA public participation process provides an opportunity for early and meaningful discourse on historic preservation

issues by the consulting parties and the public while still achieving the purpose of 36 CFR 800.14 in streamlining compliance activities at the Presidio through the use of a Programmatic Agreement.

PA-2. ***Modify PA to Incorporate 106 Review Procedures***

Various historic preservation organizations recommend that the 106 process needs to be incorporated into the PA, because they believe that the NEPA process provides less strict scrutiny of potential adverse effects on archeological resources, historic buildings, or on the streetscapes and other features that contribute to the unique character of the Presidio. They urge the Trust to incorporate guidelines from the NHPA in the PA to ensure the preservation of the NHLD.

Response PA-2 – It appears that the commentors' concern arises from the inherent difference between a Programmatic Agreement under 36 CFR Part 800 Subpart C and Section 106 compliance achieved through 36 CFR Part 800 Subpart B. It has been stated "the review processes described in the Programmatic Agreement for projects in historically or archaeologically sensitive areas (particularly the Main Post, Fort Scott and Crissy Field districts) should be modified to incorporate the procedures set forth in the federal regulations governing the Section 106 consultation process under the National Historic Preservation Act." However, as the Advisory Council on Historic Preservation made clear in their response to comments on the previous proposed revision to 36 CFR 814, "[t]his section…provides for new options for agencies to pursue in streamlining their section 106 compliance activities and incorporates the practice…of developing Programmatic Agreements to facilitate coordination between Section 106 and an agency's particular program." The Trust believes that the Programmatic Agreement document is consistent with the Part 800 regulations, although as a Programmatic Agreement it inherently takes a different and streamlined approach to achieve 106 compliance than the one included in Subpart B. The processes proposed for this PA (particularly when viewed in light of the interaction with the Trust's NEPA procedures) are legitimate alternatives to the Subpart B procedures and embody adequate opportunities for the involvement of the public and consulting parties in keeping with the sense of Part 800.

PA-3. ***Amend PA to Apply the Same Evaluation Process for Archaeological Properties .***

The CCSF Planning Department contends that if the Trust determines an archaeological property to be eligible for listing on the National Register, the Trust should treat it as eligible for 106 purposes. They believe that if the Trust determines that an archeological property is ineligible, and the Trust and NPS agree, then it is ineligible. They also believe that if the Trust and NPS disagree about a property the Trust has determined as ineligible, then the Trust should request an opinion from the SHPO.

Response PA-3 – Programmatic Agreement Stipulation XIII B requires that archaeological discoveries be handled in accordance with a site-specific research design or archaeological management plan, and allows the Trust to assume the property is eligible for the National Register and act accordingly. Stipulation VI C concerns the situation in which the Trust believes a discovery is ineligible, and provides for consultation with the NPS and the SHPO as suggested by the commentor.