



Preserving America's Heritage

March 10, 2010

Mr. Craig Middleton
Executive Director
Presidio Trust
P.O. Box 29052
34 Graham Street
San Francisco, CA 94129

*Ref: Comments on the First Draft of Programmatic Agreement for the Main Post Update
Presidio of San Francisco National Historic Landmark, San Francisco County, California*

Dear Mr. Middleton:

As requested in the January 26, 2010, Section 106 consultation meeting, the Advisory Council on Historic Preservation (ACHP) is submitting its comments on the Presidio Trust (Trust) first draft of the programmatic agreement for the Main Post Update (PA-MPU).

As a general comment, we believe that the consultation process as it has evolved has been productive and narrowed the differences among the consulting parties on many issues. We are eager to work with the Trust and the consulting parties to bring the Section 106 process to closure in the near future.

We are pleased with the development of the PA-MPU thus far and feel that this agreement can be brought to a final draft through consultation. As previously stated by the National Park Service in its comment letter on the PA-MPU, our comments are also intended to assist in defining the process reaching this goal. Below please find (in no particular order) those issues the ACHP feels continue to be a source of tension in the process, and how we feel compromise can be met in addressing those issues.

1. The ACHP believes that the PA-MPU should continue to be developed outside of the *Programmatic Agreement Among the Presidio Trust, National Park Service, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer Regarding the Presidio Trust Implementation Plan and Various Operation and Maintenance Activities for Area "B" of the Presidio of San Francisco, Golden Gate National Recreation Area (PTPA)*. The PA-MPU should govern all projects proposed under the MPU; while it may mimic the PTPA, it should be a separate and independent agreement document for the MPU.
2. While many consulting parties wish to see a finalized MPU before signing the PA-MPU, we do not feel that is essential. The ACHP anticipates that the PA-MPU will include several stipulations that will influence the final MPU. Accordingly, the PA-MPU and the final MPU will have to be completely consistent and it is important that the MPU embody those provisions that are agreed to in the PA-MPU. If the MPU is not finalized prior to the execution of the PA-MPU, the PA-MPU should include a stipulation that clearly defines the process and timing for finalizing the

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

MPU. The ACHP recommends that the Presidio Trust release an updated MPU to reflect changes that have been made since February 2009. This should include a red-line-strike-out of the Presidio Trust Management Plan (PTMP) so consulting party members will be able to understand how the PTMP will change with the MPU.

3. The ACHP does not need to see a revision to the finding of effect (last released in July 2009). We feel that the agency's determination of an adverse effect is an on-off switch in the process. Once an adverse effect has been made, consultation can continue to identify alternatives to the undertaking avoiding, minimizing, or mitigating the adverse effects.
4. The ACHP supports keeping buildings 40 and 41 in their current location and incorporating them into El Presidio interpretation, or alternatively relocating them within the Presidio to interpret World War II at the Presidio. The first draft PA-MPU references both removal and demolition. If the Trust wants to keep the relocation of buildings 40 and 41 to allow for the interpretation of El Presidio as an option, then the PA-MPU should clearly define a process to involve consulting parties at a later time.
5. The ACHP supports the continued use of structure 96. There is no need to demolish a contributing resource to the National Historic Landmark District (NHLD) given the withdrawal of the Contemporary Art Museum at the Presidio proposal.
6. The ACHP wishes to make it clear that the Section 106 process for the archaeology laboratory is part of the MPU project known as the Heritage Center at El Presidio. Accordingly, no action concerning the archaeology laboratory should take place before the execution of the PA-MPU. If the Trust wishes to conclude the Section 106 process for the archaeology laboratory before the PA-MPU is executed, the ACHP would support uncoupling the archaeology laboratory from the Heritage Center at El Presidio for Section 106 purposes and the MPU, and participating in an accelerated Section 106 process under the PTPA.
7. The ACHP recommends that the Trust define more precisely terms such as "design guidelines," "historic structure reports," "cultural landscape reports/treatment plans," etc., for both the consultation concerning the MPU and the PA-MPU. The current usage of these terms can confuse the reader as to their purpose and intent.
8. The proper use of Historic American Building Survey/Historic American Engineering Record/Historic American Landscape Survey (HABS/HAER/HALS) documentation levels needs to be established by the National Park Service's Heritage Documentation Programs. They will determine the appropriate level of documentation. In the event the Heritage Documentation Program does not agree that HABS/HAER/HALS documentation is warranted, the PA-MPU should provide a clear process to determine the appropriate level of documentation and identify an appropriate repository.
9. The ACHP recommends that the duration of this PA be limited to five years and not the proposed 15 years. This is based on past experience with agreement documents with large scale projects such as the implementation of the MPU that evolve, often rendering the agreement obsolete. The ACHP is not advocating the complete revision of the PA-MPU in five years, but for the opportunity to take a critical look at the how the PA-MPU is functioning. If amendments are needed they can be made at that time, including extending the PA-MPU for an additional five years.

10. The Trust is proposing to document certain historic properties within the Main Post (e.g., HABS/HAER/HALS) as a measure to mitigate adverse effects. The information that this documentation will produce could be extremely valuable to the Trust in the management of the NHLD. As such, the ACHP recommends that the PA-MPU clearly define a process to involve consulting parties at a later time to assist the Trust in identifying the most "appropriate" use of that documentation.
11. One of the benefits of a Programmatic Agreement for meeting Section 106 compliance is to allow departures from the "normal" Section 106 process found in Subpart B. While there are some instances when returning to Subpart B is appropriate, the ACHP feels that there is an opportunity here for the Trust to adapt Subpart B to its particular management and consultation needs. The current references to Subpart B should be examined with an eye toward developing tailored processes where they would be beneficial.
12. The ACHP recommends that the Trust further define clear timelines for the production of reports (e.g. historic structure reports, archaeological management plans) so that they can influence future projects under the MPU and establish clearly the role consulting parties will play in their development and implementation. These reports should be completed before any actions regarding a particular property (i.e., request for proposal, design of project, etc.) are undertaken by the Trust or a proponent to ensure that the integrity of the NHLD is protected to the maximum extent possible.
13. Design guidelines as defined by the PA-MPU, as found on page 62-69 of the PTMP, are not what the ACHP considers "design guidelines." We view that information to be more in line with what a planning guideline would include. It seems that consulting parties, including the ACHP, are looking for more detail in design guidelines that would be specific to the historic properties and resources involved in proposed projects ensuring that the integrity of the NHLD is protected to the maximum extent possible.
14. The ACHP is aware of the disagreement among the consulting parties regarding the qualifications for the Trust's Federal Preservation Officer (FPO). The ACHP recommends reaching a conclusion by examining the following: (1) the standards as defined by *The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act*; (2) customary practices by federal agencies in meeting the guidelines; and (3) the needs of the Trust in filling out its preservation program staff.
15. Other consulting parties have raised the question of the requirements of Section 110(f) of the National Historic Preservation Act and 36 CFR § 800.10. The integrity of the NHLD is of extreme importance in balancing the mission of an agency and the continued use of historic properties and those provisions require the Trust "to the maximum extent possible, undertake such planning and action as may be necessary to minimize harm" to a NHL. The Section 106 regulations acknowledge that the provisions of 36 CFR § 800.6-7 are used to meet this requirement with certain additional steps: the engagement of the ACHP in the consultation to resolve adverse effects, notification of the Secretary of the Interior to provide an opportunity to participate, the optional preparation of a "Section 213 report," and reporting of the outcome of the process to the Secretary of the Interior by the ACHP. The ACHP is satisfied that the Trust has met these procedural requirements through its conduct of the consultation process.

16. The definition of consulting parties needs to be clarified. The ACHP sees four types of parties in this consultation process and we have defined below their respective roles in the execution of this agreement:

- a. **Signatory:** consulting party with the sole authority to execute, amend, and terminate the agreement;
- b. **Invited Signatory:** consulting party with the authority to amend and terminate the agreement;
- c. **Concurring Party:** consulting party asked to concur in the agreement, indicating acceptance of the process leading to the agreement and a desire and willingness to participate in future consultations; however, cannot prevent the agreement from being executed, amended, or terminated; and
- d. **Member of the Public:** party not included in the development or execution of the agreement as a consulting party but will have the opportunity to comment on the undertaking in future consultations.

It is the ACHP's recommendation that:

- Signatories, Invited Signatories, and Concurring Parties should be given the same authorities under stipulations involving additional review of projects as currently proposed for Signatories and Invited Signatories;
- Participation by a Member of the Public should be limited to specified public comment periods in the consultation process for future projects.
- If a Signatory, Invited Signatory, Concurring Party, or Member of the Public fails to respond within the predetermined review period, it should not be construed as a waiver of all rights to provide comment on the undertaking. Rather, the Trust may just proceed to the next step in the process. If the party re-enters the process the Trust may continue the consultation without being required to reconsider previous findings or determinations; and
- If a current consulting party does not sign the PA-MPU as a Concurring Party it should only participate in future consultations as a Member of the Public.

Specific editorial comments on the first draft PA-MPU can be found as an attachment to this letter. They have been presented in track-changes format. We will also provide those comments in electronic form to Mr. Rob Thomson.

We are pleased to see that the Trust is planning a teleconference among signatory parties to discuss comments on the first draft PA-MPU. Recommendations for this discussion should include, but are not limited to, the following topics:

- The role and responsibilities of a Federal Preservation Officer;
- The finalization of the MPU;
- The need to update the PTMP; and
- How guidelines, reports, and plans (as identified in the PA-MPU) can most benefit the Trust.

If you have any questions concerning our comments on the first draft PA-MPU please contact Ms. Katharine R. Kerr at (202) 606-8534 or at kkerr@achp.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid J. Nelson", with a long horizontal flourish extending to the right.

Reid J. Nelson
Director
Office of Federal Agency Programs