



Due Date: April 26, 2021

Agency: The Presidio Trust

Subject: Presidio Trust response to January 26, 2021 Presidential Memorandum on Tribal Consultation

Designated Agency Official:

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On January 26, 2021, President Biden issued his Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. The memorandum requires that the agency head (a) submit a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175, after consultation by the agency with Tribal Nations and Tribal officials as defined in Executive Order 13175 within 90 days of the memorandum; (b) designate an agency official to implement the plan and prepare progress reports; and (c) submit a progress reports 270 days after the date of the memorandum, and annually thereafter.

Executive Order 13175 requires each agency to: (a) have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications; (b) to the extent practical and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute unless it meets certain exceptions; (c) to the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency takes certain steps prior to the formal promulgation of the regulation; and (d) when appropriate, each agency should explore using consensual mechanisms for developing regulations on issues relating to tribal self-government, tribal trust resources, and Indian tribal treaty.

The Presidio Trust (“Trust”) does not have any regulatory policies with tribal implications that would require consultations with Indian tribes or tribal officials. In the future, if the Trust intends to promulgate any regulations with tribal implications, the Trust, in accordance with EO 13175, will revise this plan and conduct meaningful consultation with any appropriate Tribal Nations, giving meaningful consideration of Tribal input in the decision-making process.

Although the Trust does not have any regulatory policies with tribal implications, the Trust maintains a commitment to respecting Tribal sovereignty and the Nation-to Nation relationship in the consultation process, and consults with appropriate Indian tribes in its historic preservation program. Like many agencies, the Trust uses a programmatic agreement to manage its historic preservation program.¹ This agency-wide agreement document was created in 2014 in consultation with the National Park Service, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer.² The agreement notes that the Trust “has

¹ 36 CFR 800.14 *Federal agency program alternatives*

² Full title: 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

made a good faith effort to locate federally recognized Indian tribes that may attach religious and cultural significance to properties under the administrative jurisdiction of the Trust or with which the Trust could consult under the Native American Graves Protection and Repatriation Act (NAGPRA); and the Trust has determined that there are no such federally recognized tribes”.

The Trust, as a matter of practice, routinely communicates with Native Californian groups using a contact list maintained by the California Native American Heritage Commission (state agency) for San Francisco County. The Trust contacts these non-federally recognized groups early in the planning process for projects that have the potential to affect pre-contact archaeological deposits, both to maintain good-faith relationships, and so that the Trust is prepared to manage an unanticipated discovery or a Native American Graves Protection and Repatriation Act (NAGPRA) consultation, should one be required.

As stated above, if the Trust intends to promulgate any regulations with tribal implications pursuant to EO 13175, the Trust will amend its plan in accordance with EO 13175.