

## **Appendix J – Programmatic Agreement for Fire Management Activities**

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**PROGRAMMATIC AGREEMENT  
AMONG THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
THE CALIFORNIA OFFICE OF HISTORIC PRESERVATION, AND  
THE NATIONAL PARK SERVICE,  
GOLDEN GATE NATIONAL RECREATION AREA  
REGARDING THE TREATMENT OF HISTORIC PROPERTIES THAT MAY BE  
AFFECTED BY FEDERAL FIRE MANAGEMENT ACTIVITIES**

**WHEREAS**, the Golden Gate National Recreation Area (Park) is a unit of the National Park Service (NPS), a Federal land managing agency; and

**WHEREAS**, the Secretary of the Interior has directed his/her agency heads to assume responsibility for implementing the principles, policies, and recommendations of the 1995 Federal Wildland Fire Management Policy (Federal Fire Policy) on a joint, interagency basis whenever possible; and

**WHEREAS**, implementation of the Federal Fire Policy on Federal lands by the NPS may affect properties either listed in or eligible for listing in the National Register of Historic Places (historic properties); and

**WHEREAS**, a coordinated program among the parties to this agreement would: facilitate compliance with Section 106 of the National Historic Preservation Act, as amended (NHPA), and the National Environmental Policy Act (NEPA); provide for effective and timely coordination among local fire fighting agencies, Indian tribes, the State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), and interested public; and improve efficiency, consistency, and accountability in the development and application of appropriate measures to inventory, evaluate, protect, and manage historic properties that may be affected by implementation of the Federal Fire Policy; and

**WHEREAS**, the Park has consulted with the SHPO (and invited the participation of the ACHP, which declined to participate) and has, through the Fire Management Plan Environmental Impact Statement (EIS), provided for consultation with affected Indian tribes regarding the process by which historic properties shall be considered by the Agencies in conducting fire management activities in accordance with the intent of Section 106 and Section 110(a) of the NHPA (16 U.S.C. 470f and 470h-2), and the ACHP's implementing regulations entitled "Protection of Historic and Cultural Properties" (36 CFR § 800);

**NOW, THEREFORE**, the Park and the SHPO, mutually agree that the Park shall carry out their Section 106 responsibilities in accordance with the stipulations of this Agreement in order to take into account the effects of fire management activities on historic properties.

## PREFACE

The past federal policy of total fire suppression on federal lands has resulted in massive increases in flammable vegetation (i.e., fuel loads) that threaten life and property, including National Register of Historic Places listed and eligible properties (historic properties). The federal government spends billions of dollars each year on wildfire suppression, damage, and fire recovery, and those annual costs are rising due to accumulated vegetation that fuels increasing numbers of large and devastating wildfires. In response to this problem, the [Federal Wildland Fire Management Policy of 1995 \(Federal Fire Policy\)](#), including the [Federal Wildland Fire Policy for Wildland/Urban Interface Protection](#), was developed and adopted by the Secretaries of Agriculture and Interior as the policy of their member agencies, including: the United States Forest Service the NPS; the Bureau of Indian Affairs ; the Bureau of Land Management ; and the United States Fish and Wildlife Service (Agencies).

Wildfires are unscheduled events for which planned responses can result in logical levels of resource protection. The [Federal Fire Policy](#) emphasizes long-term and pre-incident planning in the form of Fire Management Plans for each administrative unit of federal lands with burnable vegetation. Thoughtful fire management planning will benefit historic properties by reducing the potential for catastrophic fires while affording such properties appropriate levels of consideration.

The Agency heads have been directed by the Secretaries of Agriculture and Interior to develop an integrated strategy that will implement the principles, policies and recommendations of the Federal Fire Policy on a joint, interagency basis whenever possible. The Agencies must also meet legal mandates including the requirements of Section 106 of the National Historic Preservation Act. However, the standard Section 106 process described at [36 CFR § 800](#) is not well suited to the circumstances of fire management. This Programmatic Agreement (Agreement) is designed to contribute to the success of the three major program areas of federal fire management (fuel reduction, wildfire suppression, and fire recovery) by decreasing regulatory delays, assisting agencies in meeting their historic preservation responsibilities, and developing effective strategies to implement the Federal Fire Policy at the Golden Gate National Recreation Area.

This Agreement affords the Park the ability to develop or pursue cultural resource management processes that are most effective in satisfying its Section 106 responsibilities for fire management undertakings according to its particular operations. The Agreement incorporates recommended Cultural Resource Components from the Guideline for the Management of Cultural Resources Related to Fuels Management Projects, and provides incentives for their further development and incorporation into the Park's Fire Management Plan. This agreement integrates cultural resource management procedures with the Park's fire program, and is consistent with, and based upon, NPS historic property preservation policy as set forth in NPS *Management Policies* and *NPS-28, Cultural Resource Management Guidelines*.

## STIPULATIONS

### I. DEFINITIONS

Unless otherwise defined within this Agreement, the definitions contained in 36 CFR 800.16 shall apply to this Agreement.

### II. STAFFING AND QUALIFICATIONS

The Park shall ensure that historic preservation activities conducted under the terms of this Agreement are carried out by, or under the supervision of, historic preservation specialists (Cultural Resource Specialists) in appropriate disciplines that meet the *Secretary of Interior's Guidelines for Historic Preservation Projects, Professional Qualifications Standards (Federal Register 1983, Vol. 48, No. 190. 44738-39)* and Office of Personnel Management's *X118 Standards*.

"Supervise" means active oversight or review, as appropriate, of all aspects of the work to ensure that it meets professional standards.

### III. PLANNING

The Secretary of the Interior has directed the Agencies under their jurisdiction to implement the Federal Fire Policy. Accordingly, every federally managed area with burnable vegetation must have an approved Fire Management Plan (FMP) that guides decision making. FMPs describe the application of various fire management practices to those specific land units, taking into consideration an array of environmental concerns, including the consideration of historic properties. Fire management decisions and actions applicable to this Agreement are made within the context of the *Fire Management Plan Environmental Impact Statement for Golden Gate National Recreation Area*.

### IV. PARTICIPATION BY INDIAN TRIBES AND PUBLIC

#### A. General Policy

The views of Indian tribes and the public are essential to informed Federal decision-making regarding the effects of fire management activities on historic properties. Consultation with Indian tribes will be on a government-to-government basis. The Park shall make reasonable efforts to seek and consider such views.

Consistent with the [Federal Fire Policy](#), firefighter and public safety is the first priority in every fire management activity. No provisions of this Agreement shall restrict the Park from taking any actions necessary to protect firefighter and public safety.

## **B. PROCEDURES FOR INVOLVING THE PUBLIC**

The Park may be able to plan all specific fire management activities within a single annual planning document, or a five-year fire management activity plan, while activities may require multiple levels of planning with the planning for specific undertakings deferred for years. In light of this variability, no single standard for consultation with Indian tribes and public participation will be suitable to all the Park undertakings.

1. Every five years, beginning with the adoption of the Fire Management Plan, the Park shall provide the public and appropriate Indian tribes with the opportunity to comment on the five-year fire management activity plan. The results of this public comment will be communicated to the SHPO and ACHP, who shall have thirty days to comment.
2. The Park shall review its projected fire management activities annually, under the stipulations of section VI.C. of this Agreement.

## **V. IDENTIFICATION OF HISTORIC PROPERTIES**

### **A. ONGOING IDENTIFICATION EFFORTS**

1. Since its establishment in 1972 the Park has made efforts to carry out the identification of historic properties, and continues to do so on an ongoing basis, supplemented by NPS-wide efforts. Numerous historic resource studies, cultural landscape inventories, archeological surveys and other reports – supplemented by NPS databases such as the List of Classified Structures, the Cultural Landscape Inventory and the Archeological Servicewide Management Information System – have resulted in the identification of the known historic properties that are listed in Appendix 1 to this Agreement.
2. Despite substantial identification efforts, only a small portion of Park lands have been surveyed for archeological resources, and there remain structures, landscapes and districts within the Park that have not yet been assessed for National Register eligibility. Thus, in accordance with 36 CFR 800.4(b) (2), the Park proposes to carry out ongoing identification efforts in consultation with the SHPO.

### **B. IDENTIFICATION OF HISTORIC PROPERTIES IN ASSOCIATION WITH UNDERTAKINGS**

1. In addition to on-going efforts to identify historic resources the Park will carry out identification work on an as-needed basis in relation to individual undertakings, annual fire management activity plans, and five-year fire management plans.
2. This additional effort to identify historic resources in relation to undertakings is elaborated upon in Section VI.C. of this Agreement, describing the process for review of individual undertakings and fire management plans.

## VI. REVIEW OF UNDERTAKINGS

### A. USE OF EXISTING PROCESSES

Either the Golden Gate National Recreation Area Programmatic Agreement, the NPS Programmatic Agreement, or the procedures described at 36 CFR 800 may be followed if either of these alternatives is suited to the nature of a fire management undertaking.

### B. RESOLUTION OF PROCEDURAL QUESTIONS

1. The SHPO and/or the ACHP may choose to monitor the manner in which the Park is following the procedures described in the EIS, FMP and this Agreement, by reviewing the manner in which those procedures are implemented for individual fire management undertakings.
2. SHPO and/or ACHP (reviewing parties) may request the Park to provide documentation for review of individual undertakings. Such documentation will be carried out using the "Assessment of Effects Form" (Appendix 4).
3. Reviewing parties shall review documented historic preservation activities according to the procedures, standards, and guidelines provided in the FMP and EIS.
4. Reviewing parties shall be afforded 30 calendar days from receipt to review documentation for individual fire management undertakings, if reviewing parties' requests for review are made prior to, or at the time of, Park and public review of documentation (e.g., NEPA review).
5. If a reviewing parties' request for review occurs during the public review period, then the reviewing parties must provide review and comments in accordance with the ongoing or remaining public review period, but in no case will the reviewing party have less than 30 calendar days for review.
6. If Park planning for an undertaking has begun under the terms of this Agreement prior to reviewing parties' request for review under [36 CFR 800](#), subsequent review of the undertaking under 36 CFR 800 shall apply only to those historic preservation activities that have not been conducted by the date of the SHPO/ACHP request.
7. If the Park does not adopt or incorporate the recommendations of the SHPO/ACHP into the plans for implementing the fire management activity, the Park must consult with the SHPO pursuant to [36 CFR 800](#) for the specific undertaking, instead of the provisions of this Agreement.

## C. Review of Undertakings Under This Agreement by Park Cultural Resource Staff

### 1. Types of Activities

- a) Wildland fire suppression, including the use of water, chemical fire retardant, aircraft and heavy earth-moving equipment necessary to put out an active fire.
- b) Prescribed fires, ignited by trained personnel, for specific resource and fire management goals under predefined fuel and weather conditions, in order to manage vegetation, reduce hazardous fuel loads, manage cultural landscapes and restore natural systems, and for research purposes.
- c) Mechanical treatments, involving the use of hand tools and power tools and equipment for treatments such as, clearing corridors of vegetation and reducing the density of vegetation through mowing, cutting and selective trimming, using animals to reduce fuels, and revegetation of treated areas.

### 2. Scope of Activities

- a) As per a Five-year plan that has been reviewed and commented upon by the public, tribes, the SHPO and ACHP as per Section IV.B.1. of this Agreement.
- b) As listed in an annual fire management activity plan that will be reviewed in the Park per Section IV.B.2. of this Agreement.
- c) Unanticipated individual fire management activities that come to park review individually as per Section VI.C.3. of this Agreement.
- d) Federal Wildland-Urban Interface projects to reduce fire hazard on private properties adjacent to the Park will be reviewed under this Agreement, according to the same procedures as stipulated in subsections 3 and 4 of this section.

### 3. Level of Effect

- a) When the level of effect on an undertaking is determined to be No Effect or No Adverse Effect, the undertaking may be reviewed through procedures stipulated in this Agreement in Section VI.C.4, below.
- b) The mitigations listed in the Park's FMP EIS shall be considered and applied whenever applicable to reducing the level of effect of an undertaking. These mitigations are contained in Appendix 2 to this Agreement.
- c) When the level of effect of an undertaking is determined to be Adverse Effect, the undertaking shall be reviewed under procedures of 36 CFR 800 .4-6.

#### 4. Procedure for Review at Park Level

- a) **Project Submission:** The project proponent shall submit the proposed undertaking through the Park Fire Management Officer, using the "Assessment of Effects Form" (Appendix 3) with all necessary documentation to the Golden Gate Section 106 Coordinator and shall consult with the Section 106 Coordinator regarding the APE for the undertaking.
- b) **Consolidation of Fire Management Activity:** Every attempt shall be made to consolidate all fire management undertakings into a yearly program that can be understood in context and reviewed in its entirety. However unanticipated fire management undertakings are to be expected, and will be reviewed individually as necessary.
- c) **Adequacy of Submission:** The Golden Gate Section 106 Coordinator shall review the undertaking to ensure that consideration of historic properties has been given, and that adequate documentation has been compiled to identify and evaluate the effects of the proposed undertaking(s) on historic properties.
- d) **Identification of Historic Properties:** As stipulated in Section V.B.1 of this Agreement, the Park will identify historic properties for individual undertakings by:
  - (1) performing a records search for properties in existing databases,
  - (2) surveying areas that have not previously been subject to survey, or consulting with the SHPO to determine whether survey efforts over ten years old meet current professional standards for archaeological and built environment surveys. Areas where the Park and the SHPO agree that prior surveys do meet such standards will not be subject to resurvey. Areas where the Park and the SHPO agree that prior surveys do *not* meet such standards may, however, require resurvey. If the Park and the SHPO disagree on the adequacy of prior survey efforts, then the procedures outlined in Section VIII will be followed to resolve the conflict,
  - (3) performing intensive surveys in areas that the archaeological sensitivity models for the Park predict as being sensitive, and performing reconnaissance level surveys for areas that the models predict as being not sensitive, and
  - (4) ensuring that the level of survey effort for any given undertaking is commensurate with the potential effects of that undertaking's implementation on historic properties.
- e) **Review Coordination:** The Golden Gate Section 106 Coordinator will provide the Assessment of Effects Form for the proposed undertaking(s) to the Golden Gate cultural resources preservation staff for review, comment, and/or recommendations as outlined in the Golden Gate Standard Operating Procedure for Section 106 Compliance (SOP 606, Appendix 4). In reviewing these proposed undertakings, emphasis will be given to a multi-disciplinary approach, in acknowledgement of the wide range of resources with potential to be affected by fire and fire management activities.
- f) **Adherence to Governing Principles:** Golden Gate cultural resource preservation staff shall ensure that proposed undertakings comply with laws, regulations, standards, guidelines and NPS policy.
- g) **Certification of Undertaking(s):** When the Golden Gate Section 106 Coordinator and the Golden Gate Cultural Resources staff find that either no historic properties will be affected by the undertaking or that historic properties are affected but the level of effect is not

## **B. Failure to Resolve Objections**

1. If the Park determines that the objection cannot be resolved it shall forward all documentation relevant to the dispute to the ACHP and notify the SHPO. Within 30 calendar days after receipt of all pertinent documentation, the ACHP will either:
  - a) Provide the Park with recommendations, which the responsible Agency Official shall take into account in reaching a final decision regarding the dispute; or
  - b) Notify the Park that it will comment pursuant to [36 CFR 800.7\(c\)](#), and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the Park in accordance with [36 CFR Part 800.7\(c\) \(4\)](#) with reference to the subject of the dispute.
2. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The Park's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.
3. In order to document the resolution of objections, the "Assessment of Effects Form" (Appendix 3) will be used to keep a permanent record of how objections among the parties were resolved.

## **IX. DISCOVERIES AND UNANTICIPATED EFFECTS**

### **A. Historic Properties**

1. If historic properties are discovered or unanticipated effects on historic properties are discovered during or after implementation of an undertaking, or during or after an emergency, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:
2. Implement the procedures for discoveries and unanticipated effects to historic properties described in the FMP and EIS; or
3. Follow the procedures described at [36 CFR 800.13\(b-d\)](#).

### **B. Other Authorities**

1. The terms of this Agreement do not relieve or substitute the Agencies of responsibilities under the [Native American Graves Protection and Repatriation Act \(NAGPRA\) \(104 Stat. 3048-3058; 25 U.S.C. 3001-3013\)](#) or the [National Environmental Policy Act \(NEPA\) \(42 USC 4321-4347\)](#).

## **X. AMENDMENT**

Any signatory to this Agreement may request it be amended, whereupon, the signatory shall consult to consider such amendments. Amendments of this Agreement shall be executed in the same manner as the original Agreement

## **XI. AGENCY FAILURE TO COMPLY WITH THIS AGREEMENT**

The ACHP, SHPO or the Park may determine that the Park has failed to, or is unable to, carry out the terms of this Agreement. Inability to carry out the terms of this Agreement shall be determined through periodic review of the Agreement or the review of individual undertakings pursuant to [Stipulations VI. and VII.](#) Failure to comply with the terms of this Agreement shall require the Park to comply with the requirements of [36 CFR 800](#) for individual undertakings of the federal wildland fire management program.

## **XII. TERMINATION OF THE AGREEMENT**

The SHPO or the Park may notify the other party to this Agreement that it is terminated by providing 30 calendar days notice to the other party.

- A.** The parties to this Agreement shall make a good faith effort to resolve the issue(s) prompting termination. If consultation fails to resolve these issue(s), one or more party to this Agreement may issue a termination notice to the other parties.
- B.** The Agreement shall be terminated in 30 days from the date the termination notification was received. The time frame for termination may be alternatively specified upon agreement of all parties to the Agreement.
- C.** In the event of termination, the Park shall submit all individual fire management undertakings for review pursuant to [36 CFR 800](#) or the terms of another executed Programmatic Agreement.

## **XIII. COORDINATION WITH OTHER AGREEMENTS**

Should a conflict occur between the terms of this Agreement and the terms of another agreement document executed in accordance with [36 CFR 800](#), the signatories to this Agreement shall consult with the parties to the conflicting agreement to determine which terms should be followed.

- A.** The Park shall document the consultation and resulting agreement, invoking Section VIII.B.3. of this Agreement.
- B.** If the consulting parties fail to reach agreement, the provisions of [Stipulation VIII.B.](#) will be followed to resolve the objection.

adverse and that the documentation provided is adequate to determine those effects, the undertaking(s) will be Certified by signature of the Golden Gate cultural resources preservation staff and by the Golden Gate General Superintendent. If the level of effect is determined to be adverse, then the Park will follow the procedures at 36 CFR 800 .4-.6 to complete the Section 106 consultation process.

## **VII. PERIODIC MONITORING OF THIS AGREEMENT**

### **A. USE OF 36 CFR 800 .4-.6**

SHPO and/or (reviewing parties) may, at their discretion, request that the Park follow the procedures at 36 CFR 800 .4-.6 to complete the Section 106 consultation process for an individual undertaking under the following circumstances:

A substantial public concern exists such that the expedited review procedures in this Agreement cannot ensure that those concerns are adequately considered; or

The Park has a poor or suspect record of compliance with the terms of this Agreement.

### **B. ANNUAL REPORT**

The Park shall submit an annual report to the SHPO and ACHP at the end of each fiscal year on September 30th, listing all undertakings reviewed during the course of that fiscal year, in order to provide SHPO/ACHP with an opportunity to monitor the record of the Park in implementing this Agreement.

### **C. MONITORING OF THIS AGREEMENT**

The SHPO/ACHP or the Park (reviewing parties) may periodically monitor the effectiveness of this Agreement. Based on such monitoring, the reviewing party(s) may propose to amend the Agreement pursuant to Stipulation X, or terminate the Agreement pursuant to Stipulation XII.

## **VIII. OBJECTIONS**

Should the ACHP, the SHPO, or member of the public, make a timely objection to any actions proposed under this Agreement, the Park shall consult with the objecting party to resolve the objection. Timely objections are those that are raised within the public notification and review procedures specified under [NEPA \(42 U.S.C. 4321-4347\)](#), consistent with [the Council on Environmental Quality \(CEQ\) regulations \(40 CFR 1508\)](#), or within the review periods specified in this Agreement.

### **A. Objections during Emergencies**

If the objection is raised during implementation of emergency activities that are necessary to protect life or property, the objection will be noted and addressed during the emergency as time and circumstances allow, but shall be resolved after the emergency has ended.

- C. Annual reports or other types of reports specified in other agreements may be coordinated with the reporting requirements of this Agreement, as long as the intent and report information requirements specified in this Agreement are met.
- D. Other NPS or Golden Gate National Recreation Area programmatic agreements may be developed as alternatives to this Agreement, consistent with [36 CFR 800.14\(b\)](#).

**XIV. SCOPE AND LIMITATIONS**

This Agreement is limited in scope to Federal fire management activities and is entered into solely for that purpose and does not affect in any way the positions taken by the NPS, Golden Gate National Recreation Area, or ACHP, regarding the proper implementation of the Park’s responsibilities for other undertakings under Section 106 or related historic preservation or other environmental review statutes or regulations.

**XV. TIME LIMITS**

- A. Unless otherwise specified in this Agreement, or agreed to between the concurring party appropriate to the undertaking and review procedure, the SHPO and ACHP shall be afforded 30 calendar days from receipt of appropriate documents to respond to any Park communications. Should the SHPO or ACHP not respond within 30 days, the Park may assume SHPO or ACHP concurrence with the Agency’s determination or proposed course of action, and will document non-response by the SHPO and/or ACHP in the project file.
- B. Unless otherwise terminated as provided for elsewhere in this Agreement, this Agreement shall remain in effect for fifteen years from the date of execution of this agreement.

**XVI. Execution**

Execution of this Agreement and implementation of its terms evidences that the Park has afforded the SHPO and the ACHP a reasonable opportunity to examine and share their views on how the Park manages historic properties related to fire management activities. Execution of this Agreement and implementation of its terms also evidences that the Park has satisfied its Section 106 responsibilities for fire management activities covered by this Agreement.

**XVII. SIGNATORIES**

*Golden Gate National Recreation Area*

\_\_\_\_\_  
General Superintendent

Date:

<i>Signed copy on file at the Park</i>
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*State Historic Preservation Office*

\_\_\_\_\_  
State Historic Preservation Officer

Date: