



IN THE END, A SOCIETY IS DEFINED NOT ONLY BY WHAT IT CREATES, BUT BY  
WHAT IT REFUSES TO DESTROY.

-- John Sawhill; Former President, New York University and Former CEO, The Nature Conservancy

David Grubb, Chairman, Presidio Trust Board of Directors  
Craig Middleton, Executive Director, Presidio Trust  
John Pelka, Compliance Manager, Presidio Trust  
P.O. Box 29052  
San Francisco, CA 94129-0052

Re: Comments of the Presidio Historical Association (PHA) on: All Presidio Trust documents relating to the future of the Main Post, now subject to comment, including without limitation:

Supplement to the Draft Supplemental Environmental Impact Statement  
Draft Supplemental Environmental Impact Statement  
Proposed Changes to the Presidio Trust Management Plan  
Main Post Update  
Proposed Changes to the Main Post Design Guidelines,  
And other documents issued in the same administrative processes.

Dear Messrs. Grubb, Middleton and Pelka:

These comments are intended to be respectful, but bluntly informative. We regret that after almost two years of this process, the recent changes proposed by the Trust have failed to respond to the most important objections raised by a near-unanimous public, including this group, the PHA.

It is requested that a full copy of this comment letter be provided to each individual member of the Trust Board.

Please do not hesitate to call or email us if there are any questions about any of our comments, or to ask us to further explain or expand any of them.

Sincerely

Gary Widman, President,  
Presidio Historical Association  
June 1, 2009

**Presidio Historical Association**

**Comments to the**

**Presidio Trust**

**On**

**All Presidio Trust Documents Relating to the Future of the Main Post**

**Supplement to the Draft Supplemental Environmental Impact Statement**

**Draft Supplemental Environmental impact Statement**

**Proposed Changes to the Presidio Trust Management Plan**

**Main Post Update**

**Proposed Changes to the Main Post Design Guidelines**

**And Other Documents Issued in the Same Administrative Processes**

**June 1, 2009**

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## TABLE OF CONTENTS

I. Overview .....	4
II. Incorporation By Reference.....	6
III. Failure of the Trust’s Environmental Impact Statement (EIS) Documents to Proposed Lawful Alternatives, Consistent with the Trust’s Statutory Authority (Excepting “No-Action” Alternatives).....	7
IV. General Comments on Trust Use of Simultaneous and Multiple Administrative Processes ..	10
V. Comments on the Trust’s EIS Documents Under the National Environmental Policy Act .....	12
VI. Abuse of the “Tiering” Concept.....	14
VII. Prejudged Alternatives.....	15
VIIA. In Certain Cases an Alternative Outside the Jurisdiction of the Agency Must be Described and Analyzed.....	17
VIII. The Trust Failed to Include All Required EIS Elements, and Failed to Take All Actions Required for a Valid Environmental Impact Statement .....	18
IX. Cumulative Impacts.....	19
X. Discussion of Adverse Impacts on Historic Integrity, and Reasons Why the Trust Discussions of Those Impacts Are Inadequate.....	20
A. Inappropriate Uses are Proposed.....	21
B. Failure to Follow Applicable Guidance of Prudent Planning Principles.....	21
C. Demolition of Contributing Historic Structures, Buildings and Elements .....	22
D. Use of a Transportation FOE Format Rather than a Land Management FOE Format .....	23
E. Use of Unfounded Speculation.....	23
F. Specify Which of the Seven Aspects of Integrity of the NHLD are Effected.....	24
G. Level of Detail Presented for Preferred Alternative.....	24
H. Graphics Describing the Undertaking .....	25
I. Alternative “Strategies for Conforming to the Secretary of the Interior’s Standards”.....	26
J. Excessive Mass of New Construction Proposed .....	27
K. Consideration of the Undertaking on the Cultural Landscape .....	28
L. Increased Adverse Effects on Archaeology.....	29
M. The Subject of the Finding of Effect .....	30
N. Effects on All Parades and Discussion of History .....	30
O. Cumulative Effects.....	31
P. Possible Avoidance, Minimization, and Mitigation Strategies .....	31
XI. Additional Detailed comments.....	33
Section Overview.....	33
A. The Trust’s Confusing Processes Violate NEPA Standards for Understandability .....	34
B. The Trust’s Environmental Documents, Including Responses to Public Comments, Violate the NEPA Standard of “Analytic, Not Encyclopedic” .....	35
C. Trust Responses to Public Comments Also Demonstrate a Pattern of Inadequate, Misleading and Hyperbolic Statements. They Also Lack the Analytic Rigor Required by NEPA .....	38
D. Deficient Cumulative Impact Description and Analysis Renders the SDSEIS and DSEIS Insufficient to Meet NEPA Requirements .....	41
E. Violates Laws and Policies Applicable to All National Parks.....	45
F. Purpose and Need Statements Are Verbose and Fail to Meet NEPA Requirements.....	48
G. The Trust’s EIS Process Improperly Limits Alternatives by Using Statements of Purpose and Need That Pre-select a Chosen Outcome .....	51
H. The Presidio Trust has Inaccurately Represented Itself to the Public as “Independent” and as Having “Exclusive Jurisdiction” of the Presidio, Area B.....	53
I. The Trust Fails to Provide Adequate Information On Its Proposed “Heritage Orientation Center”.....	54
Endnotes .....	55
XII. CONCLUSION.....	55

## I. OVERVIEW

Looking back, one sees that the Trust has spent hundreds of thousands of federal dollars advocating its projects. Glaring issues remain. One project would benefit a former Board colleague, and all would unilaterally commandeer the most historically significant property in the National Historic Landmark District (NHLD) of Presidio National Park for the Trust's own contemporary and commercial purposes. The Trust spent those precious federal dollars despite the fact that thousands of responsible citizens, speaking individually and through over sixty neighborhood and public interest organizations, along with federal and state agencies, catalogued the factual and legal defects in these misguided proposals from the dates they were announced. But the Trust's self-certainty has so far been unmovable by facts, knowledge, foresight, legal readings or pleas of either experts or the public.

The Presidio Main Post is one of the most historically meaningful small places in the nation. It is "The Plymouth Rock of the West" in the words of the top state history officer. That is why in 1962 it was made a National Historic Landmark, the nation's most valued class of historically sensitive sites. The Trust's statutory duty is to protect that status and to convey knowledge of what happened there, of who was there, why, and with what consequences, to the public in the present and to the public in distant posterity. Not an easy task perhaps, but far from difficult when entrusted to experienced and responsible people. These documents confirm the Trust's failure to give the same attention to that task as it gives its current proposals.

If adopted, the Trust proposals will make it impossible for more far-sighted future Park managers to protect the site and convey that knowledge in the future. The Trust documents reflect none of the responsible, far-sighted, substantive actions mandated by the words and policies of the Trust Act, the GGNRA Act, the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the federal Administrative Procedure Act (APA) or by professional land use planning practice, (though there are many procedural steps taken under the mantle of those statutes).

The Trust's proposals are made still worse by the fact that there is not now, and never has been, any need for either the proposed buildings or the proposed activities to be forced into destructive Trust-selected Main Post locations. All new buildings and activities proposed for the Main Post might be placed into areas already zoned for them in the Presidio Trust Master Plan, (PTMP), or placed on private property, where in either case they would cause no damage to the most important historic landmark of the Presidio National Park.

The failure of the Trust to take responsible actions in the sensitive Main Post area in the past, (for example, by reconstructing, or by virtually depicting, all or part of the original fort, or by creating, or authorizing others to create a first-class history center or visitation center at that site), should not be allowed to preclude other more far-sighted, publicly responsive and legally sensitive managers of this park property from doing so in the future. Options for optimal use, and for the best protection of the most historically valuable area on the Presidio should not be pre-empted by new buildings or activities that

can be located elsewhere. But keeping the historic Main Post intact requires disapproval now of the entire set of Trust proposals.

In popularity terms, there is no question that the number of visitors who prefer to spend time in a historical park area is many times the number that prefer to spend time in a contemporary art museum. That is one more reason why it has been such a great disservice to the public for the Trust to even consider, much less fund and advocate these proposals. It also appears that if all the proposed projects were located elsewhere on the Presidio, or outside the Presidio, the numbers of visitors would at least remain the same, and in many locations could increase, compared to the numbers that would visit in the Main Post locations chosen by the Trust.

Many have noted that it is generous of former Board member, Mr. Fisher, to offer to put his contemporary art collection into a public location. But no one argues that it is gracious of him, or of the Trust, to force it into the most sensitive part of the National Historic Landmark District (NHL), which is within the Presidio National Park, which is within the GGNRA, a public area already triply dedicated to another purpose. Before 2007, most thought that those three layers of protection were clear and sufficient. After all, the GGNRA, the Presidio Park and the NHL all belong to the U.S. public, not to Mr. Fisher, nor to the Presidio Trust Board. But the Trust has taught us otherwise.

Perhaps the most telling message speaks from a straightforward reading of the Presidio Trust Act, the very mandate quoted by the Presidio Trust inside the front cover of its SDSEIS:

*As part of the Golden Gate National Recreation Area, the Presidio's significant natural, historic, scenic, cultural and recreational resources must be managed in a manner which ... protects the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area and cultural and recreational resources.* P.L. 104-333

To clarify just what those historic and cultural resources are, the Presidio Trust itself (in earlier days) said:

*Nowhere in the national park system is there represented a span and variety of history comparable to the 220 year continuum of the Presidio's use as a military garrison and occupation by Spain, Mexico, and the United States.* Presidio Trust, General Plan Amendment, p.7, quoted in the PTMP at p. 2.

For most readers, that says it all! Those plain words, read together, state a clear, common sense Trust mandate. The first Presidio Trust Board outlined the Trust's responsibility quite clearly. It is a tragedy that this Board has now attempted, through reinterpretation, administrative manipulation and costly advocacy, to ignore that guidance, and reverse its course. It now proposes to develop, (and no longer "protect from development") the most important historic and cultural resource of the Presidio National Park, and one of the most historically important sites in the nation, the Presidio Main Post.

We note below that the Trust proposals do not comply with the statutes it is sworn to enforce. We also note that it has failed to comply with the NHPA, especially with the requirements of Sec. 110, and the guidance provided to agencies under the Federal Agency Preservation Assistance Program. We therefore urge the Trust to terminate its proposed Main Post policies and actions, and to immediately embrace both the spirit and the letter of the laws, and the Main Post policies of the PTMP. We suggest it immediately PROTECT the Main Post FROM development, instead of PROMOTING its development. And we urge it to seek first class, stimulating and creative ways, to convey knowledge of Presidio and US history to the public of the present, and to the public of posterity, as Congress so clearly directed over ten years ago.

## II. INCORPORATION BY REFERENCE

In the interests of efficiency and sustainable business practice in drafting, copying and reading this and related documents, the most efficient step is to incorporate other relevant documents by reference. It is assumed that all the incorporated documents are on your desks and readily available to you. If not, please ask and we will provide copies.

A. Because the “preferred alternative” described in the newer Trust documents does not significantly diminish the mass, visitor load or “obtrusiveness” of the proposed art museum and other trust projects proposed earlier, and does not improve protection of the NHLD Main Post area, all the comments the PHA has filed since the beginning of these processes in 2007 remain applicable, and remain substantially unanswered. Therefore, all prior PHA comments in all the Trust’s subject Main Post administrative processes since 2007, are incorporated by reference herein.

B. In addition, the May and June 2009 comments on the Trust documents, prepared by the Presidio Neighborhood Representative Working Group at the request of San Francisco’s Board of Supervisors thoroughly examine and eloquently describe the adverse effects of the Trust’s subject proposals, as well as noting numerous defects in the Trust’s administrative processes. Those comments are incorporated by reference herein.

C. A number of additional points are covered in more detailed comments prepared by PHA Vice President, (and former Presidio Commandant), Whitney Hall, and others. Those comments are included as Section XI.

D. The PHA also agrees with the positions taken in the Resolution of the San Francisco Democratic County Central Committee, on May 28, 2008 (“Resolution Opposing Development of the Fisher Modern Art Museum and Hotel Near the Presidio Main Parade Ground”). That document is incorporated by reference.

E. The NPS Section 213 report, of April 2009, prepared by the NPS at the request of the ACHP and the Secretary of the Interior (hereafter “213 report”) analyzes the major adverse effects of the Trust’s proposals on the National Historic Landmark District’s (NHLDs) resources and recommends minimum steps needed for legal compliance with the law and Secretary of Interior standards. It is also incorporated by reference herein.

F. The SEIS comments prepared and submitted by the Save the Presidio organization are incorporated by reference herein.

### III. FAILURE OF THE TRUST'S ENVIRONMENTAL IMPACT STATEMENT (EIS) DOCUMENTS TO PROPOSED LAWFUL ALTERNATIVES, CONSISTENT WITH THE TRUST'S STATUTORY AUTHORITY (EXCEPTING "NO-ACTION" ALTERNATIVES)

In addition to the Trust Act provision quoted in the Overview, (above), other provisions of the Trust Act define and limit Trust activities. {Trust Act, 16 USC Sec. 460bb appendix, first enacted as PL 104-333(1966), amended by PL 105-83 (1997), PL 106-113 (1999), PL 106-76 (2000), and PL 107-107 (2001)}

The Trust's proposed actions are unlawful under its statutory authority. In addition, to the extent the "Purpose and Need" sections of Trust documents describe purposes and needs that require (or are interpreted as requiring) actions outside the Trust's authority, those purposes and needs are likewise improper. (See Section IV.)

Taking other Trust Act provisions in order, (followed by comments), one finds:

*Sec. 102 (b) The Secretary shall be responsible, in cooperation with the Presidio Trust, for providing public interpretive services, visitor orientation and educational programs on all lands within the Presidio.*

Comment: There is no evidence of the law's required "co-operation" with the Secretary of Interior, either within the documents or outside them. The record is one of minimal communication, but not one of communication, analysis and compromise required for "co-operation". The Trust and NPS did hold a design meeting in late 2008, but as noted in the Sec. 213 Report, the Trust has not followed that meeting's recommendations. Responding to the Trust's earlier proposals, the National Park Service (NPS) in its letter to the Trust of April 18, 2008, stated that the Trust proposals threatened the National Historic Landmark status of the Presidio. Those NPS objections are still relevant, and it appears that threat still exists. In its letter of December 2008, the NPS asked to be informed on a number of critical issues regarding the Trust proposals. There is no record that the Trust answered, much less "co-operated" on these points of NPS concern, as required by law. In some of its current alternatives, the Trust states it will provide "Heritage program" and create museum-type exhibits. Even though this planning and its execution would clearly be a matter of "interpretation", there is no evidence of Trust/NPS "co-operation" in planning those programs or structures. Until there is, such a program would be outside the Trust's statutory authority.

Pursuant to statute, the federal Advisory Council on Historic Preservation, (ACHP), recently asked the Secretary of the Interior to prepare a "Section 213" analysis of the Trust's Main Post proposals. It was prepared by the NPS for the Secretary, and revealed major defects in the Trust's proposals. (Sec. 213 report) Although the NPS suggested remedial steps that might be taken, there is no evidence in these documents or in recent

Trust statements that the Trust will take those suggested corrective actions. In fact, the opposite appears more likely.

Because the Trust's proposed actions dramatically and adversely affect the very sites and structures most important to the NPS' interpretation of the Park and NHL, the Trust has failed to lawfully "co-operate in providing interpretation, orientation and education programs" in its EISs, and thus failed to lawfully develop its EIS proposals

*Sec. 104 (a) The Trust shall manage the leasing, ... and improvement of property within the Presidio under its administrative jurisdiction using the authorities provided in this section, which shall be exercised in accordance with the purposes set forth in section 1 of the Act entitled "An Act to establish the Golden Gate National Recreation Area in the State of California," . . . and in accordance with the general objectives of the General Management Plan (hereinafter referred to as the 'management plan') approved for the Presidio.*

The GGNRA Act (16 U.S.C. Sec. 466bb) states that the GGNRA was established to:

*preserve for public use and enjoyment certain areas ... possessing outstanding ... historic, scenic ... values. . . . (T)he Secretary shall ... PROTECT IT FROM DEVELOPMENT AND OTHER USES which would destroy the scenic beauty and natural character of the area. (EMPHASIS ADDED)*

Comment: In short, the Trust's projects must carry out the overarching purposes of the GGNRA Act as well as those of the Trust Act. But none of the Trust alternatives described in the EISs will carry out those purposes. None will preserve the Post's most important historic area, and none will protect that Main Post from development that would destroy its character. Instead, the Trust proposes to do the very thing Congress told it to prevent, -- develop the most important historic area with massive new construction.

Sec. 104 (a) of the Trust Act also allows the Trust to act in accordance with the general objectives of the Presidio Trust Management Plan (PTMP). It was proposed and adopted by an earlier Trust Board in 2002, after over a year of hearings, with the concurrence and support of the NPS and many public groups. It contained numerous policy statements describing the Trust's "general objectives" for the Main Post and its most historic site. It is this plan that governed the Trust Board at the time it solicited bids for a luxury hotel, art museum and multiplex theater on the Main Post, and it is those buildings and activities, inconsistent with the PTMP, that are the subject of the Trust EISs.

Relevant portions of the PTMP that should have governed the Trust's current EIS proposals include:

*The Plan makes clear that the appearance of the Presidio will not substantially change over time ... First and foremost, the Plan ensures the preservation of the Presidio's National Historic Landmark District, . . . (p. ii)*

*The Trust pledges to involve the public, not only in the more specific planning that will follow adoption of this framework, but also in the actual work of preserving the park. (p. iii)*

*The Trust will collaborate with the National Park Service (NPS), as well as other partner, to ensure that a broad cross-section of the American public has many opportunities to explore the Presidio, to understand its rich history, . . . (p. iii)*

*To preserve the Presidio, the Trust must embrace the history and landscape of this place. Historical sites are not abstractions, but “the fabric that binds America’s past and present. (p. v)*

*Every reasonable effort will be made to adapt historic properties to new uses.*

*New construction will only be undertaken to encourage reuse of historic buildings*

*...(Emphasis Added.) (p. 6)*

Other text in this section authorizes construction of annexes and walkways, as needed to effectively use old buildings. But nowhere does it suggest any possibility of even one, much less two, new 100,000 sq. ft. buildings (and more) in the most historic site, -the Main Post. (For elaboration of these policies, see pp. 2-7 of the PTMP.)

It is these very PTMP requirements the Trust is charged with protecting and enforcing as “Trustee”. Yet, it is also these very provisions the Trust now seeks to avoid and reverse with its EIS (and MPU) proposals. Both the Trust Act and GGNRA Act restrict the Trust, requiring it to ENFORCE, not terminate or reverse, these “trust responsibilities” set out in its statutes and in its PTMP. The EIS proposals are therefore improper as they are outside the Trust’s scope of power and authority.

*Sec. 104 (c): Such (Trust management program) shall consist of- . . .*

*(3) new construction limited to REPLACEMENT of existing structures of SIMILAR SIZE in existing areas of development. (EMPHASIS added.)*

Comment: Even though a federal court has interpreted this “one down-one up” requirement, the Trust fails to comply with that interpretation. This provision is one component of a larger Congressional plan to preserve the various areas of the Presidio Park at their present levels of structural development, (and no more). There appear to be no buildings that the Trust has demolished, or can demolish, that would permit “replacement” with EITHER one or two of its proposed new structures of approximately 100,000 sq. ft. each, --its proposed art museum and luxury hotel. The latest proposal dividing the proposed art museum into two or three structures does not change this result, since the art museum remains a unified project proposal, which by itself requires massive new construction totaling 100,000 sq. ft. or more.

In summary, the Trust proposals for new construction in the Main Post are *ultra vires* attempts to act outside the agency’s statutory jurisdiction and authority, and as such, are not lawful proposals that may be considered in a valid EIS.

Finally, it is instructive to look again at the Trust Act, (Sec. 101) (using language first used in the GGNRA Act) where Congress noted ---

*(2) the Presidio was the oldest continuously operating military post in the Nation dating from 1776, and was designated a National Historic Landmark in 1962.*

*(5) as part of the Golden Gate National Recreation Area, the Presidio's significant ... historic, scenic, (and) cultural . . . resources must be managed in a manner which is consistent with sound principles of land use planning and management, and which PROTECTS THE PRESIDIO FROM DEVELOPMENT AND USES WHICH WOULD DESTROY THE SCENIC BEAUTY AND HISTORIC AND NATURAL CHARACTER OF THE AREA . . . (EMPHASIS added.)*

Is it “sound land use planning” that “protects the Presidio from development” to ignore an existing master plan, to privately plan for several years, then request bids for projects that directly contradict the policies of the Master Plan? Is it “sound land use planning” to spend hundreds of thousands of dollars advocating proposals which not only fail to protect the one most important parts of the Park FROM development, but which instead CREATE, and subject it TO, the very development Congress told the Trust to prevent? Is it “sound land use planning” to then use a summary “supplemental EIS” process to ram through changes to that Master Plan, reversing the Plan’s policy by 180 degrees, (proposing structures prohibited by the plan and by the Trust Act)?

In short, the Trust’s SDEIS proposals are not only unsupported by statutory authority, they directly contravene it. They are founded on legally insufficient representations of purpose and need, and are not based on the “sound principles” of professional land use planning required by Trust law. As such, all alternatives and proposals (except for no-action alternatives) and all “purpose and need” statements interpreted to require such proposals are legally invalid. The Trust should therefore immediately halt its advocacy of its Main Post building program, comply with existing law and PTMP restrictions, and start anew with legally conforming proposals.

#### IV. GENERAL COMMENTS ON TRUST USE OF SIMULTANEOUS AND MULTIPLE ADMINISTRATIVE PROCESSES

In its earlier comments, reincorporated here, the PHA objected to the simultaneous use of the multiple, conflated and shortened administrative processes in play here. The Trust’s decision to run its multiple processes simultaneously, rather than consecutively, at least in large part, is illogical, arbitrary and capricious.

The Trust is trying to do what it cannot reasonably do. In its multiple, overly strained efforts, it has illogically conflated processes for many different agency decisions. It proposes to simultaneously make decisions for all these processes, and for both “early” and “late” phases of individual processes, before it finishes other processes, or other phases of the same process, that logic requires be completed first. The Trust imposes this chaotic set of processes on the public, while claiming to comply with a statute that directs the Trust to use “sound principles of land use planning”. (See Sec. III above.)

Along with other proposals, the Trust is simultaneously taking itself, and the public, through multi-phased NEPA processes and NHPA processes on agency decisions to: a) change the PTMP by changing policy direction 180 degrees, (but without providing specific amendatory language); b) change the Main Post design guidelines, (which presently are consistent with the approved PTMP, and would disallow the Trust's proposed buildings), and c) approve at least three specific, massive building project proposals, (without providing many important architectural details).

To illustrate the lack of logic in this intertwined procedure, consider just one of the decisions, amending the PTMP. Logically, that step first requires decisions that consider infrastructure, carrying capacity, and compliance with statutory goals and limits, identifying and comparing those factors in ALL districts of the Presidio, (not just the Main Post district, (which the Trust focuses upon). Only after all those comparisons have been made, and statutory compliance satisfied, can one logically decide whether the PTMP produced by the first Trust Board, (prohibiting large new structures in the Main Post), now needs to be dramatically reversed. (If that question were addressed publicly in the same public fora used by the first Trust Board, there is little doubt in the minds of those who were involved earlier, that such a proposal would be highly controversial, and that the original policy would probably be retained or tightened, NOT reversed.)

But only after that first decision was made, could a "sound land use planning process" have the knowledge needed to make rational decisions about specific project proposals, like the Museum of Contemporary Art, luxury hotel or multiplex theater proposals in the Trust's "preferred alternative". Instead, the current Trust processes try to mesh all these steps together, and seek to approve the building of specific massive new structures on the Main Post before it has rationally determined whether current prohibitions of those structures on the Main Post are improper, or whether there is any concern with putting those structures in the other areas of the Presidio now zoned for them.

Further, one of the most serious adverse impacts of the current proposals is their devastating effect on the historical ambience and resources of the very sensitive and historically important Main Post, the single most important part of the Presidio NHL. Yet the Trust is rushing through its NEPA administrative process for evaluating those effects, requiring these comments from the public even before the Trust has issued a final Finding of Effects under the NHPA. That final Finding could have been helpful to both an informed public and a principled decision-maker if completed BEFORE describing and responding to Mater Plan changes and building proposals in an EIS. All the while, it appears to ignore the guidance provided to agencies that own NHL properties, as set forth in the NPS Federal Agency Preservation Assistance Program.

Therefore, reason coupled with statutory requirements for sound land use planning invalidates the convoluted processes that the Presidio Trust is using. As applied, the Trust's management of its multiple and simultaneous processes is arbitrary and capricious, and violates NEPA, the NHPA, the Presidio Trust Act, the GGNRA Act, and the federal APA.

## V. COMMENTS ON THE TRUST'S EIS DOCUMENTS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

### A. PURPOSE AND NEED

None of the Trust's EIS documents contain a valid statement of "purpose and need" as required by law. All such "purposes and needs" must fall within the scope of an agency's statutory authority. But as noted in Sec. III above, those of the Trust are outside that scope. Also, the Trust's purposes and needs are inconsistently stated in these documents, (see below). The agency cannot state a purpose or need which is not within its own range of responsibilities, nor can it ambiguously state a purpose and need, and then argue that the only solutions are those that ignore binding legal authorities.

The Trust documents suggest "purposes" which are variously stated formulas for "revitalizing" the Main Post. But the Trust cannot use an ambiguous "purpose" or "need" as a device for authorizing actions otherwise prohibited to it. If there were a legitimate need for "revitalizing", it could only be accomplished by actions within the scope of the Trust's authority. As the Trust has defined its purpose and need, it has set out a "need" it then says can only be satisfied by an *ultra vires* activity. Such "need" statements are improper. In any case, "revitalizing" is not one of the Trust's duties. Protecting the Main Post from development IS one of those duties, and that "need" should be served first!

The Trust occasionally mentions, but does not always analyze, the implications of its prior approval of the Disney Museum being installed in a pre-existing building on the Main Post. That renovation is under way, with the doors to open in 2009 or 2010. The Trust estimates it will bring an additional 300,000 to 400,000 new visitors each year to the Main Post, before any of the Trust's current proposals are built. Just how is it, that with crowds of that size straining the carrying capacity of that site, the Main Post can stand any more "revitalizing"? And how can the small, sensitive Main Post endure more "revitalizing", predicted to bring over an additional 500,000 people a year to this most protected, high-value historic site?

The Trust's statements relating to purpose and need are ambiguous, inconsistent and confusing, and therefore legally inadequate since they fail to state a purpose and need capable of objective analysis and understanding, (as required by CEQ regulations).

#### Examples:

In the Main Post Update, 2008 (represented by the Trust to be the most important of its many documents) we read, "The Main Post Update proposes to replace the planning concepts and guidelines presented in the 2002 (PTMP) for the Main Post District." But this statement is contradicted in the same document by: "The Presidio Trust is revitalizing the Main Post, bringing back its dynamic and populous character, and transforming it into the center of a unique national park." It then sets out "four key objectives": 1) Revealing layers of history; 2) Celebrate its dynamic character; 3) Express the spirit of innovation; and 4) Create relevant cultural experiences for all.

The Revised Main Post Update, 2009, does not have a statement of purpose and need, but states the "The Trust seeks now to bring forth the Main Post's promise as the heart of the

Presidio, and seeks to bring cultural institutions of a national stature to the center of this unique national park, etc.”

But there is no indication as to whether the forthcoming 300,000 to 400,000 additional Disney visitors per year are sufficient or insufficient by themselves for “bringing forth the promise” or “revitalization” and why or why not. And will the additional 500,000 visitors per year for the proposed projects be enough to sufficiently revitalize? Somehow in each document, all the talk about “restoration” and “bringing the Presidio back to life” ends with a recommendation that “revitalization” requires the Main Post historic area be hit with a new 100,000 sq. ft art museum, a new 85,000 sq. ft. luxury hotel and large multiplex movie theater. None of us outside the Trust are aware of any military post, national park, or National Historic Landmark District that was ever restored or “brought back” from anywhere, at any time, by building a massive contemporary art museum, massive hotel and large multiplex theater. Nor are reasonably intelligent people sufficiently gullible to believe the Trust on this one. Perhaps if one were in a slum being rebuilt by a Redevelopment Agency, such a proposal could be appropriate. But it is neither appropriate nor lawful, nor we submit even sensible, to propose that those structures be forced into the public’s GGNRA, or its Presidio National Park or its National Historic Landmark District or to the most historic part of its oldest military post, (all of which labels apply to the few blocks known as the Main Post).

In short, the Trust statements of “purpose and need” in all these documents are inadequate because the Trust is statutorily out of bounds, and because those terms are not used consistently nor stated in ways which permit objective analysis or understanding, as required by CEQ regulations. The statements also fail the basic validity test because they do not concisely state an underlying problem that can be resolved by analysis, or by the alternatives proposed.

It is also noted that in these sections, some of the Trust documents are highly misleading. The documents suggest that the ideas for an art museum and hotel in the Main Post were somehow “presented” to the Trust from the outside, and that the Trust then responded to these new, previously unconsidered, outside opportunities. In fact, many know and Trust minutes show, that the Trust itself initiated these matters and discussed them for months, (even years), then solicited proposals for both the luxury hotel and the art museum at times when its own Master Plan and legislation prohibited such structures in the Main Post, (as they still do).

Given the Trust’s clear mandate to prevent development, at least in the single most historically valuable and sensitive NHL area entrusted to it, it appears there never, under any circumstances, could be a valid “purpose and need” which could be satisfied by violating the Trust’s statutory mandate to protect that area against development while complying with the Secretary of Interior’s standards for management of NHL sites.

And given the fact that there are numerous private hotels and several movie theaters in the Presidio’s surrounding neighborhood, none of which appear to have surplus customers, it appears impossible to say that there is any “need” for any such new

businesses and structures to be located in the heart of those few historically important blocks of the Presidio NHLD.

In other words, there is no valid statement of purpose and need in the Trust documents, both because none capable of analysis and resolution has been stated, and also because there is no factual need for such structures to be located in the Presidio's most important historic site. And there is no stated purpose or need to which the Trust can respond with any legally viable alternative that includes massive new development in the one area where it is most important for the Trust to prevent such development.

## VI. ABUSE OF THE "TIERING" CONCEPT

The Trust has failed to comply with the CEQ Regulations in its use, or abuse, of the "Tiering" concept. There are two places in the regulations where this concept is addressed, -- CEQ Regulations Sec. 1502.20 and 1508.28. The Trust has structured its EISs as "tiered" statements, "tiered" off the EIS process done during the original administrative adoption of the PTMP. However, as used by the Trust here, that process is abused, and inconsistent with rational regulatory design. As described in those sections, the concept is intended to eliminate "repetitive" EIS coverage. The concept is that the original EIS discusses specific impacts in broad outline, approved first, while the subsequent "tiered" statements discuss later, more specific proposals (where the impacts are still within the broad outlines originally evaluated). Or, "Tiering" is appropriate when it helps the lead agency focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe." {Sec. 1502.4(b)}

Clearly what the CEQ assumed was that those issues and impacts that were "already decided" in the basic EIS, would remain as "decided" in that earlier process. Obviously, the CEQ did NOT mean to imply that an agency could simply issue a "tiered" statement on a later, specific proposal that directly contravened the findings, impacts, policies, assumptions and decisions of the original, underlying process, and thereby avoid the need to reopen a settled earlier decision. If permitted, that tactic (using a SEIS to examine only the impacts of a current "tiered" proposal) would leave the most controversial issues (conflict of the agency's later, specific proposal with the prior decision), (in this case, the issue of development of the Main Post), unexamined by ANY EIS. The Trust's current SEIS proposals and impacts appear to be contrary to the proposals and impacts analyzed in the original EIS, contrary to the final PTMP that resulted from that EIS process, contrary to legislation that approved that PTMP and contrary to common-sense readings of the Presidio Trust Act and the GGNRA Act. And if permitted, the conflict with the underlying issues originally covered would remain unexamined.

Therefore, Trust actions using "supplemental" and "supplement to the draft supplement" impact statements cannot be lawfully "tiered" off the basic, full EIS on the PTMP, as is attempted here. A "tiering" process with "EIS supplements" can be logically used only when the original full impact statement contemplated a range of alternatives that included, in general terms, impacts which are then described with more certainty and specificity in the later "tiered" or "supplemental EIS".

That is, a “supplement” can be used only when it implements a larger scale plan covered by the original foundation EIS. See 40 C.F.R. §1508.28. It cannot be used to silently reverse central policies of the basic EIS that are not re-examined in the supplement. (See Sec. II above, for quoted policies from the PTMP {covered by the basic EIS} that would be reversed by the proposals described in the SEISs) without fully reanalyzing the alternatives and impacts or explaining the rationale for the agency’s change in position. If an agency wishes to change the direction of its policy 180 degrees, as the Trust is here, then its new EIS process must expose the basic issues and the new agency direction to the public and provide the agency and the public with a new and rational sequence of decisions.

## VII. PREJUDGED ALTERNATIVES

“Agencies shall not commit resources prejudicing selection of alternatives before making the final decision.” {CEQ Regulation Sec. 1502.1 (f)} Among the related constraints is Sec. 1506.1; “Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.”

Despite early public criticism, the Trust’s EISs are particularly vulnerable on this point. The Trust has not restrained its enthusiasm for the art museum or luxury hotel, from the time before the RFPs were announced up to the present. Some of the actions where the Trust displayed its prejudgment include:

- A. Studying a Fisher-proposed contemporary art museum on the Main Post for an extended period of time, perhaps years, before it was made public with an announcement implying it was a “fait accompli” except for the necessity of some government-required processes.
- B. Accepting and spending funds from an “anonymous donor” for a landscaping study of the Parade Ground which resulted in a recommendation for a “cultural institution” to be placed at the Fisher/Trust proposed location for the Contemporary Art Museum (current Bowling Alley site). This was done, despite the fact that in six public hearings or meetings on the Parade Ground plan, each meeting ended with a near-unanimous public recommendation to eliminate the proposed “institution” at the chosen Parade Ground location. (However, with each new meeting, the “institution” mysteriously reappeared.) The Parade Ground Environmental Assessment (EA) was then prepared and issued without including any discussion of the cumulative foreseeable impacts of the proposed museum and proposed hotel, even though those plans had apparently been considered by that date.
- C. Holding a public ceremony and press event announcing how great the Fisher Museum would be in a designated location, before it issued an RFP or EIS for a “cultural institution” in that chosen location.
- D. In 2007 the Trust issued a Request for Proposals (RFP) for a “cultural institution” to be located on the chosen Main Post site. The RFP specifications clearly appeared to prejudice and favor the Fisher Museum over other types of cultural institutions as they included, among other things, provisions for “art” on the roof of the building. This

organization (PHA) submitted a proposal for a History Center, an activity that would at least fall within the Trust's statutory responsibility. A Trust letter then advised that the Trust had approved the Fisher proposal and disapproved the PHA History Center proposal. However, the letter made clear that the Trust would nevertheless use the PHA History Center proposal, (even though rejected) for its NEPA purposes.

- E. In regard to the Hotel proposal, the Trust on its own initiative (at a time when the PTMP prohibited such a structure) issued an RFP for a luxury hotel on the Main Post. It did not make other locations, like Crissy Field, an area already approved for a hotel, or Ft. Scott, an area approved for a conference center, available to the bidders. It did not specify that the hotel must primarily use existing buildings, as the NPS did in its contemporaneous bid process for its new Ft. Baker hotel, (Cavallo Point). Not surprisingly, the Trust received responsive bids for a large, new luxury hotel to be located in the middle of the Main Post NHLD.
- F. The scoping process pursuant to CEQ regulation s 1507(a) 1 and 1508.25 was supposed to designate the significant issues to be examined in depth. The public described such issues, but the public's concerns were not reflected in Trust proposals that accommodated those concerns.
- G. The Trust has never been silent about its decision to favor the Fisher Art Museum proposal over proposals for other possible alternatives. During the EIS process, the Trust staff and leadership went to great lengths to negotiate designs and plans for the art museum with the Fisher group, but never once did it seek to modify, negotiate, or consider structural or financing options for the disapproved (but nevertheless, EIS-described) History Center.
- H. In recent months, the Trust invited the public to join Main Post tours, where public participants were treated to pro-Museum and pro-hotel statements. The Trust constructed models of its proposed museum, hotel and theater, (but none showing other EIS options) and invited the public to twice-weekly sessions where the plans represented by these models were promoted.
- I. There were other similar actions, right up to the present. Apparently eager to remove the Bowling Alley operation from its building, (the site proposed for the Fisher Art Museum), the Trust terminated the Bowling Alley lease, effective the end of April, 2009. However, since the Bowling Alley was a widely supported and heavily used activity, the reason for the termination apparently was to permit prompt demolition of the building as soon as possible after completing its administrative decision processes, without waiting a day longer than absolutely necessary.

So starting well before it issued its 2007 RFPs, the Trust's mind was apparently made up. It has treated all of the other alternatives discussed in its EIS as mere formalities that need only be mentioned in the EIS in order for its prior decision to build the Museum, hotel and theater to be validated.

In short, the Trust has failed to keep an open mind on all the alternatives or to comply with NEPA in good faith. That is, it has not considered alternative locations for its proposed activities, and it has not considered alternative activities for its chosen Main Post locations with the same persistent intensity or the same expenditure of staff time, given to the Fisher Museum alternative. It appears that it pre-selected its chosen locations, buildings and activities from prior to the beginning of the Supplemental EIS process to the present. Therefore its EIS process has failed to meet the requirements of the NEPA.

#### VII A. IN CERTAIN CASES AN ALTERNATIVE OUTSIDE THE JURISDICTION OF THE AGENCY MUST BE DESCRIBED AND ANALYZED

CEQ regulations and guidance requires that at times reasonable alternatives outside the jurisdiction and power of the agency be identified and analyzed. (See 40 C.F.R. §1502.14(c), CEQ, 40 Most Frequently Asked Questions, #2b.) The alternatives need to respond to valid statements of purpose and need, which as is noted in other sections, is quite confused in this case. However, the Trust seems to imply or assume that there is some purpose and need for a contemporary art museum, hotel and multiplex theater to be located not only in the Presidio, but in the most sensitive part of the National Historic Landmark District. If in fact, the Trust so assumes, then it must also describe alternatives based on other locations, even if those locations are outside the jurisdiction of the Trust.

In this case, the San Francisco Board of Supervisors passed a resolution requesting that the Fisher Museum be constructed within the City, and outside of the Presidio. That option has frequently been proposed by the public as well, and is more consistent with the Trust's statutory responsibilities than options the Trust has proposed. For example, with locations outside the Presidio:

- 1) There would be no need for the museum, hotel or multiplex theater to interfere with the existing NHLD; and
- 2) Downtown locations would reduce the need for energy consumption and creation of air pollution by those persons visiting the hotel, museum or theater; and
- 3) Out-of-Presidio locations would greatly reduce traffic and overcrowding beyond the Main Post's carrying capacity as a National Park and NHLD, and
- 4) Downtown locations where more of the public could "walk in" would get more visitation than locations requiring long, energy burning trips to the Presidio.

Because locations outside the Presidio are more environmentally responsible, and because "outside" locations have received city and public support, if there is a "need" for the proposed buildings anywhere, then out-of-Presidio sites for all three should also be analyzed, comparing their impacts with the potential impacts of Presidio locations, (especially in the areas of air quality, energy use, greenhouse gas emission and adverse impacts on Main Post/NHLD historic integrity).

## VIII. THE TRUST FAILED TO INCLUDE ALL REQUIRED EIS ELEMENTS, AND FAILED TO TAKE ALL ACTIONS REQUIRED FOR A VALID ENVIRONMENTAL IMPACT STATEMENT

The Trust SEISs also appear invalid because of other failures to comply with applicable CEQ regulations, including without limitation, the following.

A. “Environmental impacts shall be analytic rather than encyclopedic.” {CEQ Regulation Sec. 1502.1 (a)} The Trust’s impact discussion is not analytic. For example, although the Trust proposes to reverse the statutory and PTMP restrictions on development in the Main Post, (in its MPU and Design Guideline changes and elsewhere) there is no amendatory language offered, which would permit analysis of the pros and cons of this proposal.

As another example, the Trust’s statement of “Purpose and Need” is unsupported by statutory authority and is imprecise, (as in its “need” for “revitalization”, an undefined term); in the face of the massive influx of visitors already scheduled for later this year, or early next (300,000 to 400,000/yr. scheduled to visit the new Disney museum) even before the crowd increases responding to the hotel, art museum and theater. There is no way to analyze what the terms “revitalization” or “need for revitalization” specifically mean in this context. There is no way to determine whether all or any part of the “revitalization” is lawful, or to determine when in the future there might be enough “revitalization” to satisfy the Trust’s imprecise desire for more “vitalization”. How might one determine when there is a qualitatively adequate or quantitatively adequate “vitalization” imposed on the NHLD? What will the Trust do to the Main Post NHLD in pursuit of “revitalization” at the expense of history? It recently added a large restaurant to its Parade Ground plans. Will the Trust also encourage T-shirt shops? Is Fisherman’s Wharf its concept of “vitalization”? If not, what is? Because the Trust’s EIS terms are neither defined nor analytic, as required by this CEQ regulation, no one can know. The language used in the EISs is therefore legally inadequate.

B. In the NHPA, Sec. 110 and in the Programmatic Agreement (PA) (dealing with history issues) which the Trust entered into with the NPS, ACHP, State Historic Preservation Office, (SHPO), the National Trust for Historic Preservation, and this organization, (the PHA) they both specifically require that work on historic issues and legal compliance be carried out or approved by a Federal Preservation Officer (FPO) with specified qualifications, employed by the Trust. According to newspaper reports, it appears that after trying some fourteen times to encourage or force the most recent FPO to sign statements he believed were inaccurate, the FPO left the Trust. Since that time, the Trust has not hired another FPO. Therefore, its “expert” representations about its proposals’ effects on the NHLD, both in its recent EIS documents and recent NHPA documents, (including the important Finding of Effects documents) have not been prepared, reviewed or approved by a contractually qualified FPO. Under these circumstances, a reasonable reader should be skeptical. For that reason as well, the EISs, at least insofar as they describe and evaluate adverse effects on the NHLD and the “cultural” landscape have not been lawfully prepared.

C. CEQ Regulation Sec. 1502.16 requires distinct discussions of “direct effects and their significance” and “indirect effects and their significance”. We fail to find these required EIS elements in the Trust documents.

D. Regulation Sec. 1502.16 (c) requires discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State and local land use plans, policies and controls for the areas concerned. The EISs do not include legally sufficient discussions of these conflicts. For example, the San Francisco Board of Supervisors has issued a lengthy, and highly negative comment on the Presidio Trust plans. The NPS in 2008 issued a letter describing the conflicts with NHLD policies. More recently the NPS has, in its Sec. 213 report, issued negative comments on the potential adverse effects of the proposals on the Presidio National Park and National Historic Landmark District. While this last report was issued after the EISs were issued, the Trust does not discuss conflicts between its proposals and city policies, between its proposals and Department of Interior regulations and “Secretary’s standards” for NHLDs, conflicts between its proposals and the Trust’s own PTMP, or conflicts between its proposals and the mandates of the Trust and GGNRA laws that created the Trust.

To illustrate just one such conflict, the Sec. 213 Report in its interpretation of CFR Part 36, Sec. 800.10 (at p. 22 of the Report) notes that the square footage of new construction and proposed demolition of historic resources, should “maintain the existing ratio of historic building square footage to non-historic building (area).” According to our calculations that means that the proposed new construction in the Main Post should be limited to no more than an additional 20,000 sq. ft. over that construction already approved, as opposed to the 220,000 + sq. ft. proposed by the Trust. The Trust EISs fail on these grounds as well.

Other requirements of section 1502.16 also appear to have been neglected or given only summary, (and inadequate) treatment in the EISs.

## IX. CUMULATIVE IMPACTS

The CEQ regulations define “cumulative impacts” in Sec. 1508.7 as:

*The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.*

Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The EIS does include a section entitled “Cumulative Impacts”. However, it is a sketchy overview, lumping both Doyle Drive and Crissy Field improvements together with the Trust’s Main Post building proposals. It also seems to overlook the words “incremental” and “impact” in the definition. The EIS text describes structural changes in the Main Post, but does not suggest what the “impact” or the “incremental impact” of one or more of those changes would be on the visitor who comes to the Main Post to understand and feel the history that “happened” there.

The text does note that its “cumulative actions” would have a significant adverse impact on the Main Post, and then refers to provisions in other documents that “would avoid, minimize or mitigate adverse effects”. Saying that these proposals have an adverse impact is technically accurate, but is also a dramatic understatement that conveys none of the magnitude of the adversity. It is something like saying a tsunami will have an adverse impact on your sand castle.

The Trust’s language is not sufficiently precise to be legally adequate. It does not tell the reader what the incremental effect of approving one or more of its major building projects might be, nor does it point out that adoption of its proposed changes to the PTMP and Design Guidelines (MPU) will have the effect of completely reversing the constraints against development included within the current PTMP. It does not spell out that one of the more serious adverse impacts could be loss of the NHLD status for this valuable historic site. It does not spell out that construction of the proposed buildings will completely destroy the visitor’s feeling of being present with history at this site, at this “Plymouth Rock of the West”.

For all these reasons, the Trust’s discussion of cumulative impacts is legally inadequate.

#### X. DISCUSSION OF ADVERSE IMPACTS ON HISTORIC INTEGRITY, AND REASONS WHY THE TRUST DISCUSSIONS OF THOSE IMPACTS ARE INADEQUATE

After reviewing the most recent draft FOE (Finding of Effects prepared in the NHPA, Sec. 106 process) and the Main Post Update, we find that, in spite of the changes, many of the same issues and difficulties are still present in the new documents. Because of this we believe that the explanation lies in not in the execution, the hard work and creativity, but at the level of the concepts themselves. The basic approach and operative concepts (at least for the new construction) are such, and potential loss to the historic values is still so great as to threaten the status of the NHLD.

This opinion is confirmed by the evaluation of the FOE in the National Park Service 213 Report, which confirmation only increases our concern. The adverse effect on the NHLD by the proposed undertaking as a whole, and some of its components if done separately, no matter how designed nor how skillfully presented will be severe and could be fatal to the designation and to the National Park.

We are distressed to find, notwithstanding many letters from us, and others, on the subject, that the design guidelines (now called “Strategies for Conforming to the Secretary of the Interior’s Standards”) are still not in compliance with those Standards (hereafter “Standards”). Following is an explanation of the major problems with the project concepts described in both documents and the EIS documents that still remain to be solved. We also attempt to suggest some possible ways to solve them.

## A. INAPPROPRIATE USES ARE PROPOSED

A fundamental difficulty with both the project and process is the Presidio Trust's inability to utilize the Standards correctly. The Secretary's Standards are additive, starting with #1. Standard #1 relates to appropriate use and states, "**A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.**" The two most intrusive proposals, the hotel and the art museum, do not meet this Standard. Because the Standards are additive and these elements of the current undertaking will cause a major change to "features spaces and spatial relationship", they fail on this first, most basic Standard. By failing to adhere to Standard #1, the Undertaking automatically fails to comply with the other nine standards. As a result, it is almost unnecessary to evaluate it against the other nine Standards. No project should be undertaken which does not meet Standard #1.

The buildings proposed would neither be allowed by the current Presidio Trust Management Plan (PTMP) nor by the Presidio Trust's own current Design Guidelines applicable to the Main Post. Nor would they ever be permitted in a National Park if the National Park Service administered it.

We reiterate our statement in our letter of a year ago:

"They [the buildings] also appear to be inconsistent with the policies expressed in the Presidio Trust legislation, which policies have been interpreted by the Trust itself in its own Mission Statement."

## B. FAILURE TO FOLLOW APPLICABLE GUIDANCE OF PRUDENT PLANNING PRINCIPLES

The Presidio Trust continues to do its planning in an after-the-fact manner. Whether this is because it isn't getting good preservation advice, or because it is ignoring the good advice it receives is not clear. If the former, this problem might be alleviated by the Presidio Trust's hiring a qualified Federal Preservation Officer with a minimum of five years experience, as required by the Presidio Trust's original Programmatic Agreement. If the latter, the Presidio Trust should consider restarting the process after undertaking (with public participation) a process of Preservation Planning for the Presidio.

Since the PTMP was completed in 2002, it appears that goals have changed for the Presidio without this process being undertaken. Any plan for the Presidio should grow out of the history and historic resources present in the NHLD rather than be based on goals, which destroy or transform them. A planning process which attempts to integrate arbitrary new functions is jeopardizing the National Historic Landmark District should be reconsidered and abandoned.

The completion of a Cultural Landscape Report and Cultural Landscape Inventory for the NHLD is the best way to begin the planning process and inform not only the public, but also the Presidio Trust Staff.

## C. DEMOLITION OF CONTRIBUTING HISTORIC STRUCTURES, BUILDINGS AND ELEMENTS

The current Undertaking continues to call for the demolition of several historic structures that contribute to the NHLD. These losses could and should be avoided. While we would ordinarily confine our comments to the official documents actually presented for review, it has been impossible not to observe some disturbing changes in the evolving design of the Art Museum, which has been presented to the public separately.

Building 97, a building that is a contributor to the district, is shown as demolished in the current architect's drawings for the Museum (whose detailed design is not included in the documents being reviewed herein) although the undertaking documents call for it to be moved. Moving it will cause the building to lose historic integrity, but demolishing it is worse. Neither is necessary. Building 97, the Red Cross Building, should be retained, and should not be moved.

However a more disturbing interpretation could be made from this inconsistency between the Preferred Alternative and the current museum architect's drawings: It suggests there is a major disconnect between the preservation advice the Presidio Trust is receiving and the way the design team is carrying it out. This ignoring of its own advice casts doubt on the proposition, presented in the FOE, that future design of the (now conceptual) projects will actually meet the Secretary of the Interior's Standards. See Item II above. For that reason, any Programmatic Agreement that results from the current 106 process, must outline requirements for proceeding with a design that include the same degree of consultation as the previous 106 process has provided hitherto.

Page 33 of the FOE: The tennis court, resource No. 96, is a contributor to the NHLD. The tennis court should be retained. The tennis court could be retained if the museum were moved elsewhere.

Page 94 of the FOE: The adverse effect, which will result from the demolition/moving of No. 96 and 97, is another loss to the NHLD that could be avoided, and should be.

Buildings 40 and 41 should be retained and used to help with interpretation of El Presidio, some of which they may conceal. Their loss would be an adverse effect to the NHLD, and in particular, to the interpretation of World War II.

Page 96 of the FOE: The two small garage structures, Buildings 113 and 118 are slated to be demolished. The effect of their loss exceeds the benefit gained by their removal. Reconfiguring the parking to permit them to be used as garages would allow them to remain as contributing resources while providing places for cars. These buildings should be retained.

The undertaking also removes Building 386, which qualifies as a contributor to the draft 2008 NHLD update. The removal of this building for parking is also unnecessary and easily can be and should be avoided by the same strategy. This building should be

retained because its loss would be an adverse effect to the building, the Main Parade, and the NHLD.

It is not appropriate to say only that a “building” will be affected by being demolished. The demolition of an historic building is *adversely affecting the NHLD as well*. Since there is only one NHLD, any adverse effect on any historic contributor cannot avoid being an adverse effect to the Presidio NHLD as a whole. To say otherwise is confusing, incorrect, and minimizes the gravity of each loss of integrity. The only place in the document that has clearly made the connection between loss of integrity and the adverse effect to NHLD is in the sentence that ends at the top of page 78 of the FOE: “It would also result in a direct adverse effect to the NHLD...”

#### D. USE OF A TRANSPORTATION FOE FORMAT RATHER THAN A LAND MANAGEMENT FOE FORMAT

The finding of effects document is not written using a “land management” approach. As land managers, the Presidio Trust should complete the process in ways that better reflect a land management perspective. Instead, the FOE generally evaluates only two conditions of effect: either no effect or an adverse effect. This un-shaded analysis is a type that is commonly used for transportation projects such as highways (like Doyle Drive) and it is an inappropriate format for the Presidio. A land management approach is finer grained, and was the format used in the earlier FOE. Ideally the FOE would look for four gradations of effect:

- No historic properties found
- No effect to historic Properties
- No adverse effect
- Adverse Effect

#### E. USE OF UNFOUNDED SPECULATION

To state (in the absence of evidence) that a project will have no effect because it may in the future meet the Secretary of the Interior’s Standards (the Standards), as the FOE repeatedly asserts, is unwarranted. The writers of the FOE cannot guarantee that the Standards will be used properly in the future. There is no proof that it will be so, especially based on the evidence of how the Standards have been used to date. The latest redesign shows little or none of the understanding or respect for the Standards that that is appropriate in the treatment of an NHLD, and no amount of comment seems to have improved matters. Therefore, the FOE should refrain from speculating that there will be no effect from something that has not yet been designed.

#### F. SPECIFY WHICH OF THE SEVEN ASPECTS OF INTEGRITY OF THE NHLD ARE AFFECTED

The FOE should discuss every contributing feature and how the seven aspects of integrity<sup>1</sup> of the resource would be affected or adversely affected by the individual projects in the undertaking. This may seem a daunting prospect, but the 213 report takes this approach quite successfully. The resulting analysis will be helpful to the identification of strategies for avoidance, minimization, or mitigation. The complexity of the undertaking, rather than the complexity of the NHPA process, is what is making this review seem complicated. The FOE should not be so simplified and condensed that it makes these subsequent tasks harder or the outcome less accurate.

#### G. LEVEL OF DETAIL PRESENTED FOR PREFERRED ALTERNATIVE

The information provided in the MPU is now equally vague for all projects, making the “undertaking” less clear. Only a block site plan (a rough massing diagram) has been provided in the review documents for each of the projects. This is despite the statement on page 60 (paragraph 3.2.1) that “some [projects] have more fully developed programs, massing studies and architectural details.”

This level of detail makes it impossible to identify adverse effects to the integrity of the resource that are attributable to the design, materials, and workmanship of the proposed new construction.

However, based only on the location, mass and volume of the proposed new construction, it is possible to see that the hotel, museum and theater construction will each contribute to a finding of adverse effect on the Main Post, and on the NHLD. This is because the sizes of projects are relatively unchanged from what they were last year at this time. This makes the current proportional area increase in the Main Post the same as in the original proposal.

A year ago the museum floor plan was 100,000 sq. ft. It still is 100,000 sq. ft. A year ago, the “Lodge” was said to be 80,000 sq. ft. Between February and June of 2008 the Lodge description grew to 95,000 sq. ft. It is now down to 85,000 sq. ft. (if it includes the restaurant it manages which is now in a separate building).

Stripped of detail, with only block diagrams, roof heights, and a written description (page 134 of the SDSEIS), one cannot avoid the conclusion that the projects as conceived cannot meet the Secretary of the Interior’s Standards no matter how they are designed. They will cause such a serious loss of integrity to the NHLD that no mitigation is possible. This is because:

1. Some major uses are both inappropriate to the significance of the NHLD and are proposed almost entirely in new construction. The Standards recommend: “A property will be used as it was historically or be given a new use that requires

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<sup>1</sup> The seven aspects of integrity are Location, Design, Setting, Materials, Workmanship, Feeling and Association. These are the characteristics that allow the historic property to convey its significance.

- minimal change to its distinctive materials, features, spaces, and spatial relationships.”
2. The locations of the hotel and art museum are inappropriate being too central to the important open spaces. The Standards recommend: “placing a new addition on a non-character defining elevation...”
  3. The scale and mass of the new construction is too extreme, overwhelming the adjoining historic resources. The Standards recommend: “limiting the size and scale in relation ship to the historic {resource}...”
  4. The museum footprint, including courtyards, exceeds the footprint of the previous design. The sod roofs and sunken courts are inappropriate new elements, completely foreign to the military architectural vocabulary of the Presidio, which will alter the integrity of the location, setting, feeling and association. Restricting the excavations to 20 feet will not protect the archaeological resources, some of which lie at 18 ft.
  5. The losses of contributing structures to demolition are too great, and could easily be avoided.
  6. The adverse effects on the spatial organization, cluster arrangement, circulation, topography, vegetation, views and vistas, and archaeology are all too great.
  7. The accumulation of lost integrity from these projects, with the cumulative effect of previous projects, could result in the delisting of the NHLD.

For these reasons, the proposals are flawed. The outcome of this 106 process will necessarily be inconclusive. Assuming an undertaking which meets Standard #1 can be identified and adopted, a programmatic agreement, will have to detail a process for consulting parties to participate in the working out of the design and its integrity assessment going forward.

#### H. GRAPHICS DESCRIBING THE UNDERTAKING

Some corrections should be made to some of the graphics used in the FOE, some of which are the same as some in the SDSEIS.

1. The Existing building use map (page 13) should show the tennis courts as recreational (purple) rather than as “Vacant/Underutilized.”
2. Figure E (page 16) does not show any buildings being demolished. Proposed demolitions are all shown using the line type and shading which is defined in the key as “Partially Rehabilitated.”
3. Figure I (page 25) shows F-20 stopping at the North edge of the existing bowling center parking lot. According to the borings on Figure J, page 27, there were borings done throughout the parking lot, and some as far as the south side of Moraga Street that contained artifacts. The boundaries of F-20 should be expanded to include all the borings.
4. Figure K (page 28), graphs of borings, should include a rough outline to show the proposed location of the basement and foundation for the museum and its courtyards. Locations of the existing buildings are not as useful.
5. Photos provided of buildings 42, 99 and 130 (pages 490, 44 and 45) show one façade, and do not show the side to which additions will be made.

6. The wire diagrams W1 through W7 (pages 71 to 76) are useful for demonstrating that the proposed addition of building mass is inappropriate. However, these diagrams need to be refined. Interpreting them is difficult without dimensions, such as the datum from roof heights are measured. Including a site section with dimensions would be helpful in understanding the effects. It would also help if the volume enclosed were shown as a solid rather than a transparent form. Specifically:
  - a. The Wire diagram W5 fails to convey the shape of the theater addition. It doesn't show the stepped western wall, and the angle of the west wall appears to be at the wrong angle.
  - b. The diagram of the Museum (W6) should include the deep overhangs that are discussed but not shown. Not showing the overhangs distorts the effect of the form in the landscape. It only demonstrates that the mass is too great in that location.
  - c. Wire diagrams should be provided for all for building including 130 or building 49.

#### I. ALTERNATIVE “STRATEGIES FOR CONFORMING TO THE SECRETARY OF THE INTERIOR’S STANDARDS”

The section of the MPU called “Strategies for Conforming to the Secretary of the Interior’s Standards is apparently an update of what was called “Design Guidelines” in earlier drafts of the Main Post Update. However, the title is misleading and a misrepresentation. **As in earlier drafts of the guidelines, these strategies if followed would result in the loss of integrity of the resources they modify, as has been borne out by the 213 Report.** Each “strategy” has inherent conflicts with the Standards, which we will outline below. Some of the changes in approach that we suggest might be considered as avoidance, minimization strategies. In some cases, it is difficult to see how any mitigation for the proposed uses would be possible.

Heritage Center and Archaeology Lab: The archaeology lab addition is minimal and unobjectionable. However, all the uses shown in Building 50 appear to be similar to what it now houses, and some of it appears to be part of the archaeology portion; i.e. the present gift shop which is now described as “Archaeology Education.” The implementation plan does not explain the intended interpretation of El Presidio (exterior). Nevertheless, it is hard to see how the archaeology of F-1 can both be protected and interpreted. The strategies listed would help, but there is no guarantee they will be followed. The functions of Lobby and Exhibition are the same as these spaces are currently being used. The “special Events” area may be the area intended for the Heritage center, and perhaps some of the upper floors, although they are referred to as “second-floor public assembly spaces” with no assigned content. Suggestion: Remove the Heritage Center element from the MPU until the design and concept for it is fleshed out enough to be better described.

The Lodge: Despite words to the contrary, it appears that more than half of the new construction proposed will encounter the archaeological area F-9. Such a large footprint is not in keeping with the Standards. Any new construction should be confined to the

area occupied by Building 34, and the dimensions kept in line with those of buildings 86 and 87. The best avoidance strategy would be to reuse historic buildings, in addition to Pershing Hall, for lodging. In particular, the large 1940's building, No. 37, might be considered, along with some of the Montgomery Street Barracks. The experience of staying in an historic building would be vastly more appropriate in an NHLD, and would set the proposed lodging apart from its Fisherman's Wharf competitors. This would also result in fewer findings of adverse effect to the NHLD.

The Art Museum: By limiting the height to 45 feet above the intersection of Moraga and Montgomery, the building will be at elevation +152 rather than at elevation +123 as suggested by the section provided at the public meeting on May 20, 2009. Because the use is inappropriate to the NHLD, the location is one that should not be built upon, and the size is out of scale with the district, the construction of any museum in a new building should be avoided.

The Theater: The proposed addition to Building 99, the Theater, is still too large. New additions to historic structures should be both smaller and lower than the buildings to which they are attached. The "strategy" plan shows a footprint which is even larger than that proposed. Such a volume would not meet the Secretary of the Interior's Standards. The argument that this addition is not in an important view shed fails to recognize the importance of the views from Infantry Terrace, and from the West entry to the Main Post.

The Post Chapel: The illustration of what constitutes a strategy for "conforming to the Secretary of the Interior's Standards shows an addition which actually engulfs the historic structure on two sides, and which will be visible from all sides. It is doubtful that this strategy would fail to have an adverse effect if followed.

#### J. EXCESSIVE MASS OF NEW CONSTRUCTION PROPOSED

Buildings of the scale of the proposed Fisher Museum and Hotel (at 100,000 and 85,000 sq. ft. respectively) are too great for the historic context in which they are proposed. Even broken into chunks, the proposed buildings exceed the 2008 NPS charrette effort's recommendation. This amount of new construction cannot be added in such conspicuous locations in any way that could avoid loss of integrity of the Main Post. If completed, it will cause a major reduction in the Presidio's ability to convey its historic significance. The integrity of this central and oldest area of the Presidio is critical to the appreciation of the National Historic Landmark District as a whole and its significance as a National Park. No redesign can mitigate the near-total transformation of this layered, 240 year old container of history into an art park and hotel. The integrity of the cultural landscape in the Main Post will be almost entirely lost in a modern "restoration" of the Main Parade, which is designed as a front yard for the proposed Art Museum. And as long as either of those buildings is being considered by the Trust, the proposal for a multiplex theater nearby is subject to the same defect. As we stated in our last letter:

"With these three buildings alone, you are proposing to add over three football fields of interior space to the South end of the Main Post, in the most important historic area within a National Historic Landmark District, lying within a National

Park. No design solution is possible so long as the mass and location of these buildings remains unchanged. The proposed buildings could perhaps be accommodated in other parts of the Presidio, though we reserve comment on even that concept until the time when such a proposal might be made.”

The total area of new construction now proposed for the Main Post is greater than the total square footage of the historic buildings already facing the Main Parade. The two major buildings exceed the area of all the historic buildings now on Montgomery Street.

#### K. CONSIDERATION OF THE UNDERTAKING ON THE CULTURAL LANDSCAPE

The FOE should incorporate a broader treatment of the effects on the Cultural Landscape of the Presidio. The “Summary Statement of Significance” from the 1993 update uses the term “historic landscape” at least seven times in six pages. In addition, the word “landscapes” is used in the same six pages an additional five times. Notwithstanding this fact, the current finding of effect does not include any analysis of the undertaking’s effect on the cultural landscape. The current state of the art for Section 106 compliance customarily includes analysis of the cultural landscape, whether it is specifically listed in an NHLD designation or not. But the designation of the Presidio NHLD (on page 8-3 paragraph 2) clearly states that landscape is a very important component of the resource.

“The Presidio district is like a great landscape palimpsest, characterized by a rich and often dense overlay of resources from individual periods. The prime example of this exists in the area of the Main Parade Ground (No 94) where the concentration of historic, architectural, **landscape**, and archaeological resources represents most of the Post’s principal periods of development. The national significance of the Presidio of San Francisco National Historic Landmark district rests on the relative vastness of this **historic landscape** and the breadth and diversity of contributing resources within it, which still attest to the prime military function of the reservation’s exceptionally long and prominent history.”

The Summary Statement of Significance lists as contributing resources numerous landscape features, one of which is a “site” and some of which are called “structure” or “object” and which include flag poles, batteries, tanks, transformer vaults and a few salient objects, one of which is the Main Parade.

The Cultural Landscape Assessment for the Main Post (2002) is a good analysis, and clarifies the layers of history. It constitutes a good beginning, but it includes only a broad planning analysis, and does not meet the detailed requirements for a Cultural Landscape Report. To our knowledge, the Presidio Trust has so far failed to inventory and prepare a suitable report on the Cultural Landscape of the Main Post and have it certified by the NPS. The FOE cannot be considered complete without a Cultural Landscape Inventory that catalogs and rates contributing landscape features. Without such an inventory it is also impossible to prepare a meaningful finding of effects. There is no benchmark against which to evaluate the effect on the integrity of the cultural landscape in the undertaking. By omitting this document, the Presidio Trust is risking if not ensuring that

important features will be “transformed” in ways that will further degrade the integrity of the NHLD.

But even without a completed set of approved Cultural Landscape documents, The FOE must evaluate the property from a Cultural Landscape perspective. While it has been claimed that cultural landscapes were not discussed as significant in the 1993 NHLD Update, it does clearly state under the heading "Additional Landscape Features" in the 1993 Update on page 7-16:

"The Presidio National Historic Landmark update has made an initial effort to identify and explain contributing landscape features, in addition to buildings and archeological features that exist within the Landmark. However, the complexity of landscape alterations resulting from both designed and unconscious manipulations during at least eight definable historic periods has left a historic palimpsest that will require extensive research to sort out, evaluate, and manage...Many contributing features of the landscape have not been located, as yet; this is especially true for elements of the infrastructure for sanitation, water, utility, or other functional systems. These elements are considered to be significant to the overall history and fabric of the historic district if they fall within the period of significance, but were beyond the scope of this update to study in detail."

Preparation of the CLR and CLI should not be considered mitigation since they are required under the regulations. They should be provided before the 106 process is completed and incorporated into the analysis of the FOE.

#### L. INCREASED ADVERSE EFFECTS ON ARCHAEOLOGY

By pushing 20 percent of the proposed new construction underground, and by adding subterranean courtyards that are roughly equal in area to the proposed gallery footprint, the Presidio Trust is guaranteeing that the existing archaeology (F20 and part of F1) contributing to the NHLD will be encountered and destroyed by the museum excavation. Even the few borings done to date have disclosed historic period artifacts in the footprint of the museum galleries and its courtyards. Thus, the adverse effect of the undertaking on archaeology is seen to be worse than it appeared to be before. No borings were taken in the footprint of the service portion of the museum that is south of Moraga, so it is impossible to estimate its effect on the archaeology in that area.

As of 1999, the technique of “monitoring and recovery” is no longer considered mitigation under the Standards for Archaeology. Therefore, based on the additional boring information and the larger footprint below grade, the adverse effect of the preferred alternative on archaeology is seen to be much greater than that of the previous design. Once again, the only strategy that can protect the resources on this site is avoidance.

Alas, it is always the case that in order to interpret archaeology, it is necessary to do some damage. Damage to the archaeology of F1 will result from the plans to interpret El

Presidio. The working out of details for this must do its best to minimize such damage. More about this program needs to be included in the documents.

#### M. THE SUBJECT OF THE FINDING OF EFFECT

There is only one NHLD designation and that is for the Presidio as a whole. The Main Post cannot be evaluated under NHPA as if it was a separate NHLD, nor can effects on historic resources not be effects on the NHLD. The FOE often states that there is an adverse effect, or that it is an adverse effect to a single contributing Element, but seldom that there is an effect to the District as a whole. The Presidio NHLD is the only entity that could possibly be adversely affected, and so it must be affected, by any adverse effect to a contributing Element. The FOE should say so.

A spread sheet comparing the determinations of the FOE from last year with the FOE from this year reveals a striking similarity in numbers of adverse effects suggesting that the current undertaking is just as destructive to the NHLD as the previous one.<sup>2</sup> The 213 Report from the Secretary of the Interior confirms this impression. Both fail to deal effectively with the Cultural Landscape.

#### N. EFFECTS ON ALL PARADES AND DISCUSSION OF HISTORY

The FOE fails to conclude that there is an effect on the Main Parade from the Museum and Lodge. Since the Main Parade is a listed contributing element this is patently wrong. The Main Parade is listed the 1993 NHLD Update as element #94. Effects upon it must be considered in the FOE. Because both structures will be visible from the Old Parade and El Presidio, these two historic open spaces will also be adversely affected. The new construction will, at minimum, have adverse effects on the setting, feeling, and association, as well as on the design of all three of these important open spaces.

Aside from being a contributing element, the Main Parade is also a character-defining feature of the Main Post and the Presidio Historic Property as a whole. If the preferred alternative is accepted in totality as is, the Main Parade will not be recognizable for its history. This is important because the criteria for listing as a National Historic Landmark District emphasize the HISTORY over the architecture. History needs to be discussed more in the FOE and the MPU, which currently deal only with issues of design. That is one reason why continual change and transition of the architecture and built form of the property is not an acceptable reason for adding new layers to the history. These proposed additions are also not NECESSARY to the function or interpretation of the property. Another objection is that completion of the historic plan to fill in the south end of the parade ground would create a false sense of history because the reasons it was not completed are important to the history of the Presidio. It was never completed for reasons relating to both the Panama Pacific International Exposition and then the onset of World War I.

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<sup>2</sup> This spreadsheet is available on request, but not included herein since it is rather large (24" x 30").

## O. CUMULATIVE EFFECTS

Lastly, continual erosion of portions of the site dating to the period of significance<sup>3</sup> is counter to the ideals of appropriate land management for a National Historic Landmark District property and is counter to the ideals of the Secretary's Standards and Federal Preservation Regulations. The preferred alternative will transform the Main Parade into something else that is unrecognizable and unable to convey its significance. When considering cumulative adverse effects on the district, one must remind oneself of all of the changes to the Lucas complex, Doyle Drive, Crissy Field, and now the proposed Main Post undertaking and remember that the square footage of these combined areas makes up about 30% of the district's square footage. Additionally, while the Crissy Field undertaking was determined to have no adverse effect on the district prior to construction, cost became a factor during construction and the entire site was covered in fill. That, to us, should be considered an adverse effect that was never anticipated.

The Main Parade EA must be included in the evaluation of the overall erosion and cumulative effects of the preferred alternative on the Main Post and the NHLD as a whole. The Trust cannot rely on a defective EA that was approved prior to creating this preferred alternative. The actions proposed in the EA must be cumulatively analyzed in the current EIS process since construction of the projects in the Main Parade EA has not yet begun.

There is nothing in the final conclusion of the FOE about how the preferred alternative will affect the status of the NHLD. This essential point has been omitted.

## P. POSSIBLE AVOIDANCE, MINIMIZATION, AND MITIGATION STRATEGIES

Suggestions for avoidance, minimization or mitigation include the following:

1. We suggest that the Presidio Trust eliminate from its proposals any project that requires new construction within sight of the Main Parade, the Old Parade, or El Presidio.
2. We suggest that the Presidio Trust avoid the demolition or moving of any contributing or potentially contributing buildings or structures in the Main Post. (See more specific discussion above.)
3. We suggest that the Presidio Trust wait until the Disney Museum opens so that an accurate measurement of the traffic volumes created by that new museum can be made. The state of the art for traffic prediction seems unreliable, as the Academy of Sciences discovered when it found the traffic created by its new museum to be much worse than predicted.
4. We suggest that the hotel be housed exclusively in historic structures. This will accomplish several goals:
  - a. Avoid the adverse effects on archaeology
  - b. Avoid the adverse effects on the cultural landscape of a massive intrusion into the center of the NHLD.

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<sup>3</sup> The period of significance is from 1776 through 1945 in the 1993 update, but is expanded to include 1776 through 1994 in the current 85% draft update of 2008.

- c. Achieve one goal of the Presidio Trust's mandate: to reuse historic structures.
5. We suggest that the art museum be relocated out of the Presidio since there is clearly no way to prevent its damage to the aspects of integrity for Location, Setting, Feeling, Association, and Design of the NHLD. We do not believe this use can be mitigated if placed in the Main Post, due to its inability to meet even the first Standard of the SIS. (See above.)
6. We suggest that El Presidio interpretation does not necessarily require removing Buildings 40 and 41, and that they remain part of the palimpsest of the Main post. If archaeological resources are found beneath them, they could be interpreted by installing glass flooring in critical areas. This would also have the advantage of protecting the archaeological resources.
7. We suggest that a full Cultural Landscape Report and Inventory, approved by the NPS, be undertaken and the resulting analysis be considered in the working out of the designs for the remaining portions of the undertaking.
8. We suggest that the Presidio Trust not alter or close contributing circulation and streets, as those changes will also result in a finding of adverse effect and loss of integrity of the NHLD.
9. We suggest that if the project is not halted completely, that any Programmatic Agreement that results from this process outline an exhaustive consultation process for all design stages of the undertaking that includes all the current consulting and concurring parties.

#### NHLD COMMENT SUMMARY

In summary, even without a detailed analysis of the effects on the cultural landscape, the combination of the cumulative effects of past, present and foreseeable future undertakings will alter the Setting, Feeling, Association, and Design of the Presidio as updated in the 1993 NHLD documents. They will cause a catastrophic loss of integrity of the whole, potentially resulting in some or all of the Presidio no longer meeting the qualifications for listing in the National Register and in possible loss of the National Historic Landmark District status. The new construction, the transformed Anza Street, and the altered and designed landscape will become a new layer in the Main Post with its own overpowering set of associations, impacts, materials, design, and new associations which have no relation to the military and historic significance for which the district was originally designated as a National Historic Landmark.

## XI. ADDITIONAL DETAILED COMMENTS

The following comments by Whitney Hall, PHA Vice-President and others, amplify points stated above and also state additional concerns with the Trust's EIS documents.

### SECTION OVERVIEW

These comments on the Trust's EISs describe fatal defects in the Trust's conduct of these processes. Each of these severe defects renders the EISs inadequate to meet NEPA standards. Each requires a separate response.

The deficiencies reported here show that the Presidio Trust is not in compliance with Section 106 or 110 of the National Historic Preservation Act (NHPA) nor with the requirement to show "compelling reason" to impose harm on a National Historic Landmark (NHL). The Trust's documents confuse marketing "spin" with the factual and analytical requirements of NEPA. There has been confusion from the beginning as to what specific "planning concepts" were at the heart of the Trust proposals, because the process was focused from the start on specific construction proposals.

We remain utterly confused as to what happened to the original undertaking to revise the "planning concepts" of the PTMP for Main Post, which we understood to include dramatically increasing the allowable area for new construction, changing the use of Main Post from "visitor and community center" to "cultural and civic center," and redefining the Presidio from a "national park in an urban area" into a new concept, "unique urban national park."

The original undertaking concerning "planning concepts" apparently disappeared during the process to be replaced in the SDSEIS by a project-specific preferred alternative, rather than a study of planning concepts. Therefore, the comments submitted in this section do not include "planning concepts", because they were never fully defined nor analyzed. Similarly, the public has not been informed of "alternative" planning concepts, nor has there been significant public discussion of "planning concepts."

Therefore, any future claim by the Trust to use its Main Post building proposals as authorization or justification for future "planning" actions on Main Post would be improper.

A renewed and greatly revised study is required to correct these deficiencies, to insure adequate public understanding and to fully inform Trust decision makers.

We request that if this project is to proceed at all, that the Trust prepare one concise, comprehensive and analytic document prepared to the standards of NEPA so that the public will be able to comment comprehensively on the Main Post Plan as well as on the without the need to cross reference five documents and 1000 pages that are themselves confusing and contradictory.

The comments below each stand-alone and require individual responses. Prior comments submitted by the PHA and by Whitney Hall remain a part of the record.

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#### A. THE TRUST'S CONFUSING PROCESSES VIOLATE NEPA STANDARDS FOR UNDERSTANDABILITY

##### What is the "undertaking", "proposal" or "project"?

We remain confused as to what happened to the defined undertaking to revise the "planning concepts" of the PTMP for Main Post, (MPU, p. 2) which we take to include, but not be limited to, doubling the allowable area for new construction, changing the use of Main Post from "visitor and community center" to "cultural and civic center," and redefining the Presidio from a national park to a new format, "unique urban national park." The documents never made clear to a responsible layman what the "planning concepts" were nor offered alternatives to those concepts. Instead, the Trust proceeded directly to the proposed action and then the preferred alternative. The stated undertaking (or proposal) concerning "planning concepts" apparently disappeared during the process to be replaced in the SDSEIS by a project-specific preferred alternative, rather than a study of planning concepts. Therefore, the comments submitted in this letter do not refer to "planning concepts" because these are neither fully defined nor analyzed. "Planning concepts" were not the object of the environmental studies, the public has not been informed of the alternative planning concepts, nor has there been public discussion of alternative "planning concepts."

Any attempt by the Trust to use this Main Post project-specific process to authorize tiering off of this current process for future planning actions on Main Post would be improper. We request that the Trust confirm this understanding in its response.

##### Which documents remain operative and which supplemented or revised?

The review process began in a flawed manner by choosing to "supplement" the PTMP rather than to revise it. There was no alternative amendatory language proposed. The public was left to figure out what was to be "supplemented" and how a major change could be a "supplement" if it reversed important statements and policies in the first document. The confusion increased when there were both a Main Post Update and a Draft Supplemental Environmental Impact Statement to be reviewed. Later, the Main Post Update was "revised" and the Supplement to the DSEIS was itself "supplemented." Later documents contained important changes but the content of the earlier documents stayed in effect. A message from the Presidio Trust Compliance Officer stated:

*The June 2008 draft MPU reflected the proposed action; the February 2009 revised draft MPU is the Trust's preferred alternative. The February 2009 MPU enables reviewers (if they so choose) to focus their comments on the alternative that the Trust supports at this time (and, if adopted, would amend the 2002 PTMP by serving as the updated policy framework for the Main Post). We reiterate, however, that the public may comment on all documents that the Trust has published in connection with the Main Post planning. If reviewers find the level of treatment or amount of information given to the proposed action in the June 2008 MPU (and supporting SEIS) more satisfactory than that provided for the*

*preferred alternative in the February 2009 MPU and Supplement to the SEIS, they may comment accordingly.*

This statement which was intended to clarify the situation illustrates the complexity the Trust created by not completing any appropriate revision of the PTMP before producing two versions of the Main Post Update, two versions of a marketing brochure, two versions of the DSEIS, and two versions of the Finding of Effects (all in the same or simultaneous processes). The total number of pages that the public needed to analyze and to keep organize in its mind exceeded 900, plus the requirement to cross reference to the PTMP and various NEPA and NHPA regulations.

#### CONCLUSION

This confusion concerning the fundamental undertaking or goal of the process is fatal to the purpose of this NEPA process, which should be to inform the public and permit informed comment to the Trust. The process was not analytic, nor was it concise. These facts render the SDEIS legally inadequate under NEPA.

#### RECOMMENDATION

Start over. Issue a single document, with specific language proposed to revise the PTMP which is written to the standards of NEPA for analytic quality, conciseness and understandability, in order to correct these deficiencies, to insure adequate public understanding and informed comments, and to fully inform the agency decision makers. When that process is complete, use the PTMP as it stands then to govern any new proposals for specific projects.

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#### B. THE TRUST'S ENVIRONMENTAL DOCUMENTS, INCLUDING RESPONSES TO PUBLIC COMMENTS, VIOLATE THE NEPA STANDARD OF "ANALYTIC, NOT ENCYCLOPEDIA"

NOT ONLY DO THE DOCUMENTS FAIL TO MEET NEPA STANDARDS OF ANALYTICAL QUALITY, THROUGH A PATTERN OF HYPERBOLE, MISLEADING STATEMENTS, AND INACCURACIES, SUCH USAGE INHIBITS THE PUBLIC'S ABILITY TO UNDERSTAND THEM.

#### REGULATORY BACKGROUND

CEQ Regulations State in Sec. 1502.8:

*Environmental impact statements shall be written in plain language and may use appropriate graphics so that decision makers and the public can readily understand them.*

To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

*(a) Environmental impact statements shall be analytic rather than encyclopedic.*

## EXAMPLES OF IMPROPER TRUST STATEMENTS

### Use of the Words Culture and Cultural

The preferred alternative of the RFP and SDSEIS includes a “cultural institution,” a contemporary art museum. The use of the words “culture” and “cultural” in National Parks and NHLDs has a specific meaning that does NOT include the “fine arts.” The Trust has misused the terms repeatedly in all the documents for the Main Post undertaking. This misuse either is a grave misunderstanding of the terms by Trust writers or deliberate misrepresentation. Both render the documents deficient under NEPA.

The proper use of “culture” in the National Park context is the following:

*There are many definitions of the word "culture;" but in the National Register programs the word is understood to mean the traditions, beliefs, practices, life ways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole. (NPS National Register of Historic Places Bulletin) (Nbr 38).*

Elsewhere, the NPS makes it clear that “culture” in park usage is a resource found in the park, not a “fine arts” element to be introduced into the park. This use of “cultural” is demonstrated by NPS Management Policies, 2006, 9.3.1.7, which prohibit construction of cultural facilities in national parks unless:

*The permanent facility is required for programs of major importance in conveying the park story.*

### PRESIDIO TRUST ACT, SECTION 101 FINDINGS

*(3) preservation of the cultural and historic integrity of the Presidio for public use recognizes its significant role in the history of the United States. (Note emphasis on preservation of existing culture in this context, with the term used as in the NPS definition, not as a reference to fine art, music, etc.)*

*(5) as part of the Golden Gate National Recreation Area, the Presidio's significant natural, historic, scenic, cultural, and recreational resources must be managed in a manner which is consistent with sound principles of land use planning and management, and which protects the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area and cultural and recreational resources; (Note: These uses of “cultural” accord with NPS use of the term and are in the context of preservation rather than the introduction of new “high culture” institutions.)*

In the “General Objectives set forth in Presidio Trust Board Resolution 99-11, March 1999, a new twist was given to “cultural” by suggesting that the “culture” of the park could be not only preserved, but “enhanced.” However, the definition still seems limited to the cultural resources OF THE PRESIDIO, not to introduced elements, as the present undertaking requires.

The DSEIS, June 2008, p. 1 of the summary, states:

*The Trust believes that cultural institutions are appropriate in the Main Post, and that they will animate its open spaces, and bring people to the park.*

This usage disregards the meaning of “culture” in National Parks as something to be preserved, and instead tries to open the door to any form of introduced “culture.” It also sets out a purpose for the Presidio Trust not found in law, i.e., “animate open spaces” in order to bring people to the park.

We conclude that the Presidio Trust has knowingly or negligently distorted the meaning of the words “cultural” and “culture” by changing its meaning in the context of National Park laws and usage. It has misleadingly made it include the ability to now introduce fine arts or “high culture,” specifically a contemporary art museum with no links to the parks resources or purposes. This distortion confuses public understanding of the rationale for the contemporary art museum in a national park, and therefore causes the DSEIS to be inadequate along with related documents that fail to reach NEPA’s standard for readability.

#### Bring Back the Heart of the Presidio

“Bring Back the Heart of the Presidio” is the title of a widely distributed brochure that announced the Main Post project and the contemporary art museum and hotel to the public. It began a sequence of declarations about history that were apparently intended to disguise the chosen projects. The cover photo was a picture of soldiers (circa 1900) sitting on barracks steps. The first listed goal in the brochure is,

##### *1. Reveal the layers of Presidio history*

There are also numerous glowing phrases in other documents such as:

*...restore the Main Post’s historic character... (DMPU p. 18)*

The Draft Main Post Update, 2008, includes as its first objective to:

*Reveal the layers of Presidio history and to deepen our understanding of the relationship between the past and the present.” “The Presidio’s history will be central to the visitor experience at Main Post and will be legible in the district’s buildings, landscapes and scenic views.”*

The Draft MPU waits until after 13 pages of such misleading use of history before introducing the contemporary art museum proposal on p. 18. Like the brochure, and like similar statements in the EISs this deliberate misdirection and verbosity is part of a pattern that violates the standards of NEPA for analytic quality and readability.

#### Unique Urban National Park (Rev. MPU, P. 2)

The phrase “Unique Urban National Park” recurs frequently in the EISs and Trust public hearings without any definition. In contrast, it is appropriate to refer to a “National Park in an urban area,” but that term has a greatly different meaning. There is no category of “urban national park” in the National Park system, in park law, or in the Presidio Trust Act. Nevertheless, the Trust uses that phrase to imply that it can deviate from the preservation practices in other National Parks, create a new designed landscape over a historic landscape, and build structures that are inappropriate in National Parks. “Unique urban national park” is not a term that can be examined nor its implied meaning understood by the public. It fails NEPA standards for clarity.

### Revitalize

The word “revitalize” is used throughout the documents to explain the Trust’s purpose. It has no explanation or basis in law, and is a term impossible to understand or analyze. It never is defined objectively so the public can decide when “revitalization” is successfully achieved or what alternative best would achieve that.” This key concept in the undertaking is, in brief, meaningless. Its repeated use in these documents renders the documents insufficient to meet NEPA standards.

### Misleading Representation

P. S-8 of the DSEIS states,

*... the proposed action and the alternatives would preserve the Presidio’s National Historic Landmark (NHL) status.*

In fact, the National Park Service, the definitive authority on this issue, has stated repeatedly that the proposed actions “threaten” the NHL status. (See NPS letter of 4-18-08 and Sec. 213 Report.)

This sort of verbiage fails to meet NEPA requirements for clarity, brevity and analysis. Frequent use of hyperbole renders the documents insufficient to meet the “analytic” standard of NEPA.

These are but a few examples of hundreds of such inappropriate statements that invalidate the documents in the NEPA process.

### CONCLUSION

The Trust documents fail to meet the requirements of readability and analytic quality required by NEPA because of the use of misdirection, hyperbole and inaccuracies. Language renders the documents deficient in NEPA.

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C. TRUST RESPONSES TO PUBLIC COMMENTS ALSO DEMONSTRATE A PATTERN OF INADEQUATE, MISLEADING AND HYPERBOLIC STATEMENTS. THEY ALSO LACK THE ANALYTIC RIGOR REQUIRED BY NEPA

### EXAMPLES

DSEIS, p. 252. Response to comment

*The Trust fully intends to evoke the great tradition of national park lodges... One of the most important functions of the great national park lodges is to increase enjoyment of the park.*

This responds to a comment criticizing the Trust for comparing the proposed hotel to major lodges found in some parks. It substitutes hyperbole for analysis required in NEPA and as such is deliberately misleading. The “great lodges” are in remote parks nearly inaccessible in the first half of the 20th Century, such as Crater Lake, Yosemite, Yellowstone and Grand Canyon. They are not found in Philadelphia, Pearl Harbor, Ellis Island or Gettysburg. They are not relevant to the Presidio, with its proximity to thousands of hotel rooms within blocks. This inadequate response is one example of many that are misleading or incomplete. These failures undermine the NEPA process.

Response to public comment, DSEIS p 263

*National parks have a tradition of art in the parks, having given rise to some of the most important landscape painting and photography of the 20th century. From Wolf Trap and Echo Park to the GGNRA's Marin Headlands Center for the Arts, national parklands accommodate contemporary arts, both as permanent programs and as special events. In Washington DC, the National Mall alone features ten museums dedicated to history and culture, including contemporary art. "*

The comparisons are misleading. The National Mall contains the Smithsonian Institution and other museums authorized by Congress and directly funded and supervised by it. "Arts in parks" are related to the parks, as the Ansel Adams shop in Yosemite, or numerous exhibits of Native American art. The painting and photography referred to is either temporary or is based on the park. Wolftrap is the only national park dedicated to the performing arts by act of Congress. It was created for that purpose. It is not a National Historic Landmark, as is the Presidio. This is one more example of hyperbole and misdirection in Trust responses to public comments. As a result, the basic NEPA process of comment and response has been rendered invalid by this pattern of Trust responses to the Public.

Avoidance of Segmentation and Tiering, DSEIS, p. 255-256

This comment was based on the evidence suggesting that the Main Parade EA design was developed in preparation for the preferred contemporary art museum. Recently, the private proponent stated that his offer of 10 million dollars for the Main Parade was contingent upon construction of the museum. Design drawings for Main Parade show a large art museum with contemporary art on the parade grounds.

Trust Response:

*Under NEPA, actions are connected if they are closely related and if they automatically trigger other actions that may require environmental review (or cannot or will not proceed unless other actions are taken previously or simultaneously are interdependent parts of a larger action and depend on the larger action for their justification (40 CFR 1508.25 (a)(1)).*

40 CFR 1508.2 also states

*(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement."*

The response fails two of the three tests cited. The Main Parade is the site of the Hotel and is adjacent to the proposed art museum and hotel. The design for the Main Post grounds was apparently made to accommodate both, even though these reasonably foreseeable actions were not disclosed for public comment in the Parade Ground EA. The Main Parade design is interdependent with the larger design of the art museum. Therefore, it appears that the art museum and the hotel were improperly omitted from the Main Parade EA, while the Main Parade plan in turn is excluded from the Main Post EIS. These elements should all have been

considered together, in order to have a valid Parade Ground EA and a valid Main Post EIS. By separating them as the Trust has, it has rendered both invalid, and set a pattern of abuse of NEPA policies.

FONSI for Main Parade EA, p. A-10, Nov. 2007

*The projects are a subset of past, present, and reasonably foreseeable actions previously identified and evaluated in the PTMP EIS that could have effects similar to those of the proposed action, with the notable exception of the contemporary art museum, which was speculative at the time of release of the Main Parade EA and therefore did not require evaluation. However, in response to the comment and to new information sufficient to evaluate impacts, the cumulative analysis in the attached EA has been revised to include the museum project.*

This is a response to comments that suggested the art museum be included in the Main Parade study and that the EA should be elevated as a full EIS. The facts show that a contemporary art museum site was present in drawings commissioned by the Trust as early as 2004. Nevertheless, discussions with the proponent, Mr. Fisher, are not reported in Trust minutes until April 2007. The draft EA was issued in July 2007. Trust officials at a public press conference welcomed the “gift” of the art museum in August 2007. Mr. Fisher indicated that his promised donation of 10 million dollars toward the Main Parade “greening” was contingent upon the museum being built. The FONSI EA was posted on the Trust website with the museum as a reasonably foreseeable action in November 2007.

This chronology suggests that the Trust deliberately withheld the art museum from cumulative effects analysis in the Main Parade EA until after the public comment period had closed. This is a part of a pattern of misinformation in Trust actions and in its responses to public comments.

PTMP EIS, Vol. 3, p. 205. Response CO-4/ Limitation of Visitor Opportunities, May 2002

*The Trust will limit visitor opportunities to those that are suited and appropriate to the significant natural, historic, scenic, cultural, and recreational resources of the Presidio. Only those visitor activities that are consistent with the Trust Act and appropriate to the purpose for which the Park was established will be allowed. (Emphasis added)*

This policy and the Trust’s commitment to allow only “activities appropriate to the purpose for which the park was established,” (made in response to public comment) will be violated by the Trust’s own preferred action. The purposes for which the park was established are found in the Act to Establish the Golden Gate National Recreation Area. Introduced new construction of a contemporary art museum does not fit within these definitions. This Trust response makes a commitment violated by its own proposed actions.

**CONCLUSION:** The Trust has shown a pattern of inadequate and misleading responses to public comments that undermines its NEPA process.

## RECOMMENDATION

The Trust should review all responses to public comments included in its environmental review documents. Discrepancies, inconsistencies and failures to comply with the applicable law should be removed or revised.

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## D. DEFICIENT CUMULATIVE IMPACT DESCRIPTION AND ANALYSIS RENDERS THE SDSEIS AND DSEIS INSUFFICIENT TO MEET NEPA REQUIREMENTS

NOTE: These comments on cumulative impacts are limited to the preferred alternative and the impacts analyses discussions in the SDSEIS.

### REGULATORY BACKGROUND

*CEQ Regulation Sec. 1508.7: Cumulative Impacts.*

*The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

#### Sec. 1508.14 Human Environment

*“Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.*

#### Cumulative Impacts Analysis Fails to Aggregate All Impacts in an Intelligible Manner

The intent of NEPA is to understand the effect on the “human environment.” In a National Park, that is defined in terms of parks resources and “visitor experience”, e.g., the ability of a visitor to enjoy and understand the park. In historic preservation terms, “historic integrity” is defined as the ability of a property to convey its meaning, e.g. a visitor’s ability to “read” the history of the site. These approaches all center on the visitor, the human who experiences the park environment. Cumulative impacts analyses in the Trust documents do not do that. They are abstractions centered on specific structures or systems, not on the person who experiences the environment. If this were a fisheries EIS, the cumulative impact would be the impact on fish. Similarly, in a National Park, the impacts should describe the visitor experience by park guests.

The SDSEIS, p. 172, “Visitation” contains an unsupported and misleading evaluation,  
*With the exception of Alternative 4, the preferred alternative and other alternatives, when combined with the impacts of cumulative actions, would increase visitor use and add to the visitor experience offered at Main Post by enhancing its setting for the arts and for historical and cultural programs related to the Presidio.*

“Add to” whose “visitor experience”, that of the typical national park visitor, that of a tourist at the Disney Museum, or that of a modern art devotee? Does the imposition of

large-scale modern construction on the landmark have adverse effects that can overwhelm the “historical programs” that remain poorly defined and documented in the studies? P. 173 lists transportation and parking arrangements that are hypothetical. The list of “opportunities and services offered by the cumulative actions at the Main Post” contains many items that are unfounded assertions and/or items that are unrelated to the resources and values of the park or to visitor experience of the park’s resources.

#### RECOMMENDATION

The Trust should analyze cumulative effects on the experience of a typical visitor in the National Park and NHL, who is there to enjoy and appreciate the park resources for the reasons outlined in the GGNRA Act and Trust Act.

#### Actions That Are Individually Without Adverse Impacts May Add to Cumulative Adverse Impacts

Again, the way to analyze truly “cumulative” impacts is to focus on the park visitor. For example, in the Main Post, after completion of the proposed projects, an arriving park visitor will be confronted with numerous signs directing him to several outlying parking areas. He may have difficulty due to the distance of the parking areas from the major attractions. The visitor may encounter stoplights, (which are historically incorrect). From one of the several parking sites, he must find his way to his destination. Let us assume that is the Disney Museum, because that is expected to be the most popular destination in this national historic park. From there, he wants to learn more about the Presidio’s history. So, he walks to the Heritage Center that is proposed as one of three major uses for the Officers Club. It contains Spanish remains of the oldest building on the Presidio and is one of the oldest in Northern California. There is no direct diagonal walk from the Disney Center across the great lawn he sees in front of him on the Main Parade, so he can choose to follow a path directly across Montgomery Street, which is crowded with cars parked on both sides of the road, (historically incorrect), and continue across the Main Parade mall in front of the art museum toward a large luxury hotel, or he can turn right and pass in front of the massive facade of the contemporary art museum. All of this modern overwhelming intrusion in his National Park experience occurs while simply locating himself in the remaining places where he can understand the Presidio’s place in American history at this National Historic Landmark! Four-fifths of this visitor’s walk will be in front of new buildings that have both purposes and designs unrelated to those values which Congress wanted to preserve by establishing this Park.

The resulting cumulative impact is a confused setting, diminished ability of the Presidio to “convey its significant” history to park guests, and obscuring from the visitor those historic resources for which the park was established. These cumulative impacts affect the “human environment”, and reduce the quality and ability of an historic site to convey its historic significance to visitors. They will deny park tourists an ability to enjoy an enlightening “visitor experience” based on the historic resources of the park in place when the Park was established (not newly-introduced resources).

### Lack of a Definitive “Undertaking” Confuses Public Understanding of the Cumulative Impacts

There are several statements that the “undertaking” is a revision of the planning concepts in the Presidio Trust Management Plan, but other statements inform the reader “to take into account proposals” that now have been incorporated as specific projects into the preferred alternative of the SDSEIS. Puzzling. This is a fatal flaw in process. Are we to comment, as many will, on the cumulative impacts of the project-specific preferred alternative? Or, are we also to comment on the revisions to the “Planning Concepts” of the PTMP, including the increase in allowable new building space and the change in uses for the Main Post from “focal point for visitor orientation” and “community center” as in PTMP, p. 61 to “cultural and civic center of this unique urban national park?” (Revised MPU. p.2.)

There is NO factual presentation and analysis of the “planning concepts” of the PTMP that were the original proposed action for these environmental documents, nor is there a presentation of alternatives for those “planning concepts.” Over the contentious and voluminous process, the main undertaking has become focused solely on the preferred alternative, and the beginning undertaking of revising “planning principles” has been lost. Therefore, we cannot evaluate cumulative impacts of revised “planning principles”

THE SDSEIS is deficient in that it does not address the “undertaking”, “proposal” or alternative, of revising the “planning principles” of the PTMP for Main Post, which may be the most serious proposal in the entire process.

The undertaking or proposal to revise “planning concepts” simply disappears in the SDSEIS. The Presidio Trust cannot extrapolate backwards from the specific projects of the preferred alternative to change the planning principles of the PTMP. These changes have not been specific, analyzed nor understood by the public. The public cannot assess their cumulative impacts.

### Approved FOE Not Available Prior to Final Public Comment on Cumulative Impacts

We submit for the record our objections to being forced to comment on significant adverse impacts on the NHLD historic resources for which there is not an available and approved final FOE. This is particularly egregious when the draft FOE is contradicted by an authoritative Section 213 Report prepared in the Section 106 process. This failure should render the SDESIS process deficient, and the period for comment should be delayed to accommodate the final FOE.

### List of Relevant, Incomplete and Inaccurate Actions

Pages 156 and 157, of the SDEIS list the relevant actions. One is the Main Parade EIS, titled “Improvements in the Main Parade as analyzed in the Trust’s Main Parade EA.” But as noted earlier, it is neither accurate nor appropriate to consider the Main Parade EA in cumulative impacts analysis for the Main Post undertakings without modifying the Main Parade EA’s conclusions and design. It was prepared with prior knowledge of the CAMP, which was apparently improperly deleted from that analysis of effects, especially of projected cumulative effects. The greening and narrowing of the lawn was apparently designed to center it on CAMP. The location of the Anza Promenade now appears to

make little sense, being directly in front of a hotel and away from the Park Service Visitors Center. Including the Main Parade EA in the cumulative impacts analysis for Main Post introduces an improperly prepared and out of date project into the Main Post analysis and thereby renders it deficient. The EA needs to be revised to include those foreseeable impacts that should have been included at the time. Or, the issues covered in that EIS might be restated and reanalyzed in a new EIS that also considers all the relevant cumulative impacts of all proposals, (including Main Parade proposals). Leaving that original (and defective) Main Parade EA untouched leads to great confusion in understanding what the final projects, if built as proposed would actually look like with the other proposals for the Main Post.

#### Failure to Link Impacts on Various Park Resources: Crowds and Parking

Reference to the cumulative impacts of the Disney 350,000 visitors a year and the CAMP estimated 300,000 + visitors a year, plus desired public visitation to the Heritage Center of 250,000 a year is not analyzed cumulatively other than for traffic. What is the impact of the crowds on human beings who come to visit the historical aspects of the park? What are the pedestrian pathways that may be congested? Parking is contradictory and vague.

*“Adequate infrastructure would be in place at the Main Post to accommodate visitor parking.” SDSEIS, p. 173*

But elsewhere the Trust writes of the need for improved public transit and a possible 500 vehicle parking structure as part of the Doyle Drive construction...nothing definite or “analytical” in either case. Diagrams introduce “on-street parking” on both sides of Montgomery Street, which is in front of an iconic row of historical buildings. Parking historically was not permitted there. The street had to be kept open for marching soldiers during their daily routines. Parking on Montgomery Street would add to an appearance of urban congestion that has an adverse impact on the historical experience of visitors.

Stoplights are a proposed option that would be grossly destructive to the historic setting.

Omitted factors in cumulative effects are the blue parking permit kiosks that appear approximately every 30 yards. Blue is a color not found in the historical fabric of the Presidio and it unfavorably impacts the historic setting.

#### RECOMMENDATION

Link the discussion and analyses of traffic and parking in cumulative impacts with the “human environment” of park visitors. Link the discussion of “historical resources” with visitor experience.

Documents Contain an Inadequate Analysis of Other Past, Present, and Reasonably Foreseeable Future Actions Within the Analysis Area. There Are Undocumented Assertions or Conclusions of “No Impacts” Without Sustaining Evidence and Analysis. These Failures Render the SDSEIS Insufficient to Meet NEPA Requirements

Regarding p. 172, SDSEIS, there is no evidence that effects of the “greening” of the Main Parade will result in “ an array of new uses.”

The Transit Center is described as a visitor's center. It is not: it is a bus shelter with restrooms. What are the expected numbers for arrivals per day and at peak hours? What is the current base line?

The lodge is described as "improving visitor services" but this will be true only for affluent luxury hotel guests. How does it "help establish the district as a vibrant visitor destination?" How is "vibrant" to be analyzed in a science and fact-based EIS?

*The art museum would allow visitors to appreciate and understand art.*  
This statement does not refer to any art related to the resources or history of the park. Because a contemporary art museum would detract from the historic and natural resources of the park, it necessarily causes undesirable impacts on the human environment. Who are these visitors demographically? Will they be the demographic type of visitors the National Parks are designed to attract? What is the basis for a Park "need" to appreciate contemporary art? Contemporary art unrelated to purposes of the park conflicts with the Trust responsibility to impart understanding and appreciation of park resources, especially the National Historic Landmark resources.

CONCLUSION: The EIS's cumulative effects statement and analysis are gravely deficient, for failure to analyze the necessary impacts on visitors and failure to synthesize the analyses in a manner that the public can understand. The cumulative impacts analysis and discussion therefore does not comply with NEPA.

RECOMMENDATION: Restudy cumulative impacts to link the various impacts when needed, including Main Parade and Main Post impacts, especially impacts on typical Park visitors, address all foreseeable actions in Main Post in all NEPA contexts, and factual analyses and descriptions as required by NEPA.

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## E. VIOLATES LAWS AND POLICIES APPLICABLE TO ALL NATIONAL PARKS

The preferred alternative includes actions that are prohibited in any National Park; therefore, the preferred alternative is unlawful.

### FACTS

1. The Trust Act does transfer "administrative jurisdiction" to the Trust, but it also states the Congressional intent that the Presidio be included in the National Park system and that the Secretary of the Interior continue to have an important role in the entire Park's management, (not just in the NPS managed "Area A"). Numerous statements by the Presidio Trust acknowledge that the Presidio is a National Park. For example:

#### Section 101

*Findings, (4.) the Presidio, in its entirety, is part of the Golden Gate National Recreation Area, in accordance with Public Law 92-589*  
*(5.) as a part of the Golden Gate National Recreation Area, the Presidio's significant natural, historic, scenic, cultural and recreational resources must be managed in a manner which is consistent with sound principles of land use*

*planning and management, and which protects the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area and cultural and recreational resources;*

Section 102 (b.)

*Public Information and Interpretation. The Secretary shall be responsible, in cooperation with the Presidio Trust, for providing public interpretative services, visitor orientation, and educational programs on all lands within the Presidio.*

Section 102 (c.)

*The Secretary of the Interior will appoint his designee to the Trust Board.*

Section 104 (a.) requires the Trust to exercise its duties

*in accordance with the general objectives of the General Management Plan approved for the Presidio.*

The General Management Plan is an approved Park Service land use and planning document prepared after exhaustive public input and a lengthy environmental review. It incorporates fundamental National Park laws and values.

Section 104. Management Program (4)

*...the Trust shall consult with the Secretary in the preparation of this program.*

This is in the context of the real estate management program of the Trust.

2. Federal law defines the fundamental policies that guide all national parks:

Organic Act of 1916

*The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*

Redwoods Amendment, 1978 (Public Law 95-250)

*b) The first section of the Act of August 18, 1970 (84 Stat. 825), is amended by adding the following: "Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park system, as defined in section 2 of this Act, shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directed and specifically provided by Congress."*

The Organic Act and its amendments are applied by National Park Service Management Policies, 2006. These Policies are explicitly based on Park laws and judicial opinions.

#### Sec. 8.2 Visitor Use

*To provide for enjoyment of the parks, the National Park Service will encourage visitor activities that are appropriate to the purpose for which the park was established; and (which) can be sustained without causing unacceptable impacts to park resources or values.*

#### ANALYSIS

1. Congress expected the Presidio to be protected by the Trust as any national park is to be protected under law, but with certain specific real estate management exceptions to provide financial income that do not permit inflicting harm to the park resource, (which in the Presidio's case, is its historic integrity).
2. The failure of the preferred alternative to meet the standard for every National Park to avoid "impairment" or "derogation" of the park resources is demonstrated by the following Management Policy of the NPS. This policy is intended to prevent impairment of the historic and cultural resources of national parks caused by introducing new cultural facilities to parks that are unrelated to the values and purposes of the park. These values and purposes are found in the Organic Act and in the establishing legislation of each national park. The contemporary art museum preferred alternative fails all of these tests.

#### NPS Management Policies, 2006 9.3.1.7 Facilities for Arts and Culture

*...permanent facilities may be built specifically for cultural activities only when all of the following criteria are met:*

*The permanent facility is required for programs of major importance in conveying the park story.*

*It would be impossible or impractical to use demountable or temporary facilities.*

*It would be impossible to adaptively use other park facilities.*

*Neither the facility nor its operation would impair cultural or natural resources or hinder the use of the park for its intended purposes.*

*It would not be feasible for others outside the park to provide the facility.*

#### CONCLUSIONS

1. The Presidio Trust Act does not relieve the Trust from obeying the fundamental laws and policies that apply to all national parks, except as may be provided in the Trust Act. The Trust Act does not authorize the Trust to redefine what a National Park is required to be under the terms of the Organic Act, as amended, and the specific establishing legislation for each park.
2. The Trust's preferred alternative violates those National Park laws and policies. Any potential impairments or derogations of any National Park or any National Park policy by any agency's action (including those proposed by the Presidio Trust) require Congressional approval.
3. Therefore, the preferred alternative is unlawful.

RECOMMENDATION: We request responses to the three conclusions stated above.

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## F. PURPOSE AND NEED STATEMENTS ARE VERBOSE AND FAIL TO MEET NEPA REQUIREMENTS

### SUMMARY

The various statements of Purpose and Need are deficient as outlined below and thereby render the Supplement to the DSEIS, the DSEIS and the January 2008, and revised MPU of February, 2009 MPU inadequate to meet the requirements of NEPA. The documents are legally inadequate because they fail to state a clear purpose or need capable of objective analysis or public understanding.

### SAMPLE STATEMENTS OF PURPOSE AND NEED

Main Post Update, 2008

*The Main Post Update proposes to replace the planning concepts and guidelines presented in the 2002 Presidio Trust Management Plan (PTMP) for the Main Post District.*

Comment. The previous example statement is soon contradicted by the following:

Main Post Update, 2008

*The Presidio Trust is revitalizing the Main Post, bringing back its dynamic and populous character, and transforming it into the center of a unique national park. Following are four key objectives, 1. Reveal layers of Presidio history, 2. Celebrate dynamic character by adding features to support it as an urban national park. 3. Express the spirit of innovation. 4. Create relevant cultural experiences for all.*

Comment. These platitudes are unsuited for analysis and mask the purposes of the alternatives. They create public confusion.

Revised Main Post Update, 2009

This document lacks a specific statement of Purpose and Need. Page 2 states:

*The Trust seeks now to bring forth the Main Post's promise as the heart of the Presidio. We seek to rehabilitate its historic buildings and reuse them. We seek to improve its grand open spaces. We seek to bring cultural institutions of a national stature to the center of this unique national park and to bring amenities that will welcome people from around the world.*

The document also contains three "principles" of the Implementation Plan, pp. 22-26:

*I- Reveal the Presidio's History, II - Create a Welcoming Place, III - Employ 21st Century Green Practices.*

Comment. These are statements are hyperbole and platitudes unsuitable for analysis. They state what the Trust "seeks" but do not express nor establish an underlying need.

Supplement to the DSEIS

*Updating the planning concept to take into account several proposals.*

Comment. Conflating the planning concept with specific proposals has created great confusion in the public. Obviously, the fact of receiving proposals does not create an underlying need: what is the underlying need the proposals are to fulfill? Proposals themselves do not create a need.

Supplement to DSEIS, page 5

The preferred alternative,

*...best fulfills the purpose and need of revitalizing the Main Post.*

Comment. Again, “revitalizing” is a meaningless purpose without quantitative and qualitative explanation suitable for analysis. “Revitalization” implies a need but does not specify the underlying deficiencies that need “revitalizing.”

#### BACKGROUND

The various Purpose and Need Statements of the MPUs and DSEIS establish the framework for analysis of the alternatives. (CEQ 1502.13.) Without a well-defined, well-established, well-justified purpose and need, it will be difficult for the public to determine which alternatives are reasonable, prudent, and practicable, and it may be impossible to dismiss the no-action alternative.

*The statement shall briefly specify the underlying purposes and need to which the agency is responding in proposing the alternatives including the proposed action.*

#### **Multiple Statements Not Suitable for Empirical Analysis**

Purposes and Need should be objectively analyzed. The many various statements of purpose and need in the current documents do not meet the NEPA standard of “analytic.” Nor are they concise.

CEQ Section 1502.2 (a)

*Environmental Impact Statements shall be analytic rather than encyclopedic.*

Failure to meet this requirement of NEPA renders the DSEIS fatally deficient.

Purpose and need are variously stated in the Supplement to the DSEIS, for example, page 1 (“in order to take into account several proposals”), page 5 (“the purpose and need of revitalizing the Main Post”). The stated purpose to achieve “revitalization” of Main Post is not quantified into performance measures and therefore is not analytical and cannot be measured against the alternatives to be analyzed. It is inadequate to meet NEPA requirements. There are no expressions of Purpose and Need suitable for objective analysis in any of the documents. This is demonstrated in the sample statements recorded above. In sum, the statement of Purpose and Need necessary for NEPA analysis is absent.

#### **Need Statements Do Not Reveal the Underlying Problem to Be Solved by the Alternatives**

Preexisting unsatisfactory conditions are implied, but not described, in any of the Need statements, implying a nonspecific need to somehow improve pre-existing conditions.

The Revised Main Post Update, page 2, states as a need (“...in order to establish the Main Post as the cultural and civic center of this unique national urban park.”) This does not express a need. What is the baseline problem to be resolved? Why should the previously stated use for Main Post be changed? The DSEIS, section 1.3 contains a “Statement of Need” that is deficient because it is a statement of Trust plans and objectives, but provides no information concerning underlying need. For example, “a major cultural institution in the Main Post would serve as a catalyst for attracting other compatible uses.” This is a defective need statement because it does not report why “other compatible uses” are needed. There is no explanation of the Need “to recognize proposals” that are not included within the scope of the existing PTMP’s limits. This implies that all proposals received will be considered whether or not they conform to the planning principles of an approved PTMP. The SDSEIS “Purpose and Need” pp. 1-2 uses “in order to take into account several proposals” and a list of program objectives as Need. This fails to express underlying Need. What law or underlying deficiency in the park requires these proposals to be considered at all?

### **NEPA Standard for Statements of Purpose and Need Not Met**

*“The Presidio Trust is required to show compelling reasons for allowing new construction.”* (NEPAnet response, December 8, 2007. Horst Grecczmiel, Associate Director for NEPA Oversight, Council on Environmental Quality.) We interpret “compelling reasons” to mean the same as “Purpose and Need” in NEPA. The Trust has failed to meet this NEPA standard for “compelling reasons” in any of the various Need statements. This failure renders the documents deficient in NEPA. The SDEIS and related documents therefore are inadequate.

### **Purpose and Need Not Grounded in Federal Law and Regulation**

Purpose and Need stated in the documents are not explicitly grounded in terms of federal laws and regulation. This failure hinders public understanding of the legal basis for the alternatives. It also raises questions about the legality of the alternatives. Must all proposals “be taken into account,” even if they are unlawful? Are there legal requirements causing the need for the construction? What law or regulation requires a park to be “revitalized”? Why must the Presidio have a “cultural institution” or a “great lodge like other national parks” when it is not financially or physically needed, and when it is proposed for a historic area, in the face of other areas already zoned to accommodate it? (Extracts from pertinent laws are in Endnotes Section.)

### **There is No Follow-through of Purpose and Need to the Analysis and Selection of Alternatives**

The documents contain many statements of Purpose and Need, but they have apparently been forgotten in the analysis of Alternatives. The public is denied information needed to evaluate alternatives against Purpose and Need. Similarly, other alternatives were rejected in lieu of the preferred alternative without explicit analysis based on purpose and need to explain the rejection of the other alternatives. “Need” does not support the Trust’s selection of the preferred alternative. This renders the DSEIS fatally deficient.

**Purpose and Need Are Not Applied Separately to the Several Projects included in Each Alternative**

The documents are deficient because they fail to address each component project of the alternatives separately with relation to Purpose and Need. The public therefore cannot judge which of several projects included in an alternative are appropriate to the Purpose and Need or what is unneeded.

**CONCLUSIONS**

1. The Trust's statements of Purpose and Need are gravely deficient, measured by CEQ's NEPA requirements. The Main Post environmental documents contain many lengthy, ambiguous and laudatory statements of Purpose and Need. These statements fail to meet the standard of "analytic." They are not carried through into the analyses of alternatives and are not used for that purpose. They are not based in law or regulations, but represent Trust "beliefs" or "seeking."
2. Failure to state an understandable and concise Purpose and Need renders the documents legally insufficient.

**RECOMMENDATIONS**

1. The Trust should develop a single, clear purpose and need statement, rewrite the environmental documents flowing from that statement, and restart its EIS processes for Main Post projects.
2. The Trust should respond specifically to these comments, indicating which statement of purpose and need is applied to which analysis of which alternative, where the analysis applying that specific purpose and need criteria is to be found in the documents.

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**G. THE TRUST'S EIS PROCESS IMPROPERLY LIMITS ALTERNATIVES BY USING STATEMENTS OF PURPOSE AND NEED THAT PRE-SELECT A CHOSEN OUTCOME**

**SUMMARY**

The Presidio Trust has violated the intent of NEPA by its statement of purpose and need. With its choice of terms, it has precluded the ability of the public to be adequately informed of the range of possible of alternatives.

By announcing requests for proposals and selecting winning proposals prior to conducting environmental reviews, the Trust reduced the analysis and range of alternatives in the environmental review process to a point that the preferred alternative was improperly predetermined.

**FACTS**

1. A stated purpose is "to take into account proposals that are not fully contemplated in the 2002 Presidio Trust General Management Plan." (SDSEIS, p. 1.)
2. Proposals were requested in Trust RFPs for Lodging in November 2006, and "Cultural Institutions" in October 2007. Bid proposals were selected and proponents named prior to the issuance of a draft SDEIS in June 2008.

## ANALYSIS

By conducting the RFP selection prior to environmental analysis, alternatives that were within the scope of the PTMP, other than a no action alternative, were not analyzed and available for public comment. Sites off the Main Post were not examined, and reuse of existing historic structures was not discussed as an alternative.

An agency must look at "reasonable" alternatives, but this is not limited to measures that the agency itself can adopt. When the proposed action is an integral part of a coordinated plan to deal with a broad problem, such as "revitalization" or "Bringing Back the Heart of the Presidio," the range of alternatives that must be evaluated is broadened. An EIS is not only for the agency, but also for the guidance of others and must provide them with the environmental effects of both the proposal and the alternatives for their consideration. The discussion of alternatives need not be exhaustive. Information in the alternatives is required to be sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned, including alternatives not within the scope of authority of the responsible agency. (Off-post sites or a separately managed History Center on Main Post.) It is not appropriate to disregard alternatives merely because they do not offer a complete solution to the problem

CONCLUSION: The SDEIS is inadequate because the range of alternatives was improperly limited to "proposals that were not contemplated" by the PTMP.

## RECOMMENDATIONS

1. In order to have a process that is comprehensible to the public and therefore adequate in NEPA, the Trust must reorganize its process into a rational sequence:
  2. Analyze and select alternative operative "planning principles" such as purpose and need, design guidelines, area limitations for structures, purposes for structures.
  3. An EIS for the planning principles should be prepared.
  4. Identify by public scoping specific and truly different alternatives to realize the concepts and purpose and need. Include off-post, elsewhere on the Presidio, and adaptive reuse of structures.
  5. Issue requests for proposals broadly stated alternatives for meeting the objective purpose and need that has been established in an EIS.
  6. Conduct environmental impact statement processes on the proposed final individual major structures and their uses separately.
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H. THE PRESIDIO TRUST HAS INACCURATELY REPRESENTED ITSELF TO THE PUBLIC AS “INDEPENDENT” AND AS HAVING “EXCLUSIVE JURISDICTION” OF THE PRESIDIO, AREA B.

FACTS:

Page 33 of revised Main Post Update states:

*3.2 Land Use Plans and Policies*

*CONSISTENCY WITH THE PRESIDIO TRUST MANAGEMENT PLAN*

*Methodology*

*The NEPA requires an EIS to discuss possible conflicts between a proposed action or alternative and the objectives of land use plans, policies, and controls for the area concerned. The site is located on the Main Post in Area B of the Presidio, **which is under exclusive jurisdiction of the Presidio Trust, a federal agency.** (Emphasis added.)*

The Executive Director of the Presidio Trust has asserted that the Trust is “independent” from NPS regulations at a meeting of the People for the Presidio, a public meeting.

These examples demonstrate a misunderstanding by the Trust of its jurisdiction under the Trust Act; The Organic Act of 1916, as amended is the basic law for National Parks; and the Act to Establish the GGNRA, is the “umbrella” for the Trust Act. The Trust Act makes it clear that the Presidio is to remain part of a National Park within the GGNRA. It further mandates (Section 102b) that the Secretary of the Interior remains responsible for “interpretation.” Interpretation is the function of conveying the meaning of park resources to visitors. The Organic Act and the Redwood amendment make it clear that all national parks have a primary mission of preservation of the park “resources.” The Presidio National Park’s status and the policies to be applied within it cannot be limited by the Presidio Trust; The Trust’s “administrative jurisdiction for a portion of the Park cannot limit a portion of a National Park where the Organic applies to the entirety. (See Redwoods Amendment to the Organic Act of 1916.) “Administrative jurisdiction” as defined in the Act is limited to real estate management powers and responsibilities.

The Presidio Trust has proposed new plans and new uses for this National Park, including “revitalization” and construction of luxury hotel and a contemporary art museum, unrelated to the park’s resources. These are not authorized missions under National Park law or by the regulations or policies set out by the National Park Service Management Policies of 2006. .

#### SEC. 104. DUTIES AND AUTHORITIES OF THE TRUST

*(a) OVERALL REQUIREMENTS OF THE TRUST. —The Trust shall manage the leasing, maintenance, rehabilitation, repair and improvement of property within the Presidio under its administrative jurisdiction using the authorities provided in this section, which shall be exercised in accordance with the purposes set forth in section 1 of the Act entitled “An Act to establish the Golden Gate National Recreation Area in the State of California,*

In short, the Trust was given “administrative authority” to handle real property issues within the Park, but was also told by Congress that all its activities were to be for the purpose of supporting and enhancing the NHLD, the National Park, and the GGNRA.

## CONCLUSIONS

1. The Trust has limited and shared jurisdiction with the National Park Service on matters that include interpretation and compliance with the fundamental laws applied to all national parks. That includes preservation of the resource and providing a visitor experience that conveys the meaning of park resources to its visitors.
2. The Trust has misled the public by taking the position that it has “exclusive jurisdiction” or “independence” from national park laws and policies. This misrepresentation has been incorrectly communicated to the public, thereby harming the NEPA process by distorting public understanding of the limits on Presidio Trust power to carry out its proposed EIS alternatives
3. The EIS documents are insufficient because they reflect an incorrect interpretation of the limited jurisdiction that was in fact transferred to the Trust by the Trust Act.

## RECOMMENDATION

The Presidio Trust must include in a new EIS, a statement that accurately describes its authority and the limits to that authority with respect to EIS proposals for new missions, new activities or new construction within the NHLD. It should acknowledge the requirement to cooperate with the National Park Service and to comply with the laws and policies that apply to all National Parks concerning interpretation, preservation of park resources, **visitor experience pertinent to the Park resources**, and new construction of cultural facilities and other structures in National Parks.

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## I. THE TRUST FAILS TO PROVIDE ADEQUATE INFORMATION ON ITS PROPOSED “HERITAGE ORIENTATION CENTER”

The Trust’s confusing descriptions does not indicate what is meant by “Heritage.” While a Heritage Center may have positive impacts, they will be impaired dramatically by the massive construction proposed by the Trust. It is hard to imagine a valuable heritage experience being provided by a former NHLD, now crowded with massive new buildings and large crowds of people and cars, all of which obscure the views and landscapes that were intended to be protected by placing the Presidio, especially its Main Post, into the NHLD category in 1962. The Heritage Center proposal, while a baby step in the right direction, is so ambiguously and inadequately described as to leave the public with little basis for comment.

## RECOMMENDATION

We ask that the DSEIS be revised to provide a complete and specific description and analysis of the Heritage Plan, and the cumulative impacts of the structures around it. It will be important for the public to understand what alternatives have been proposed for Heritage Center, including scope of the definition of Heritage, the various buildings and

sites considered and the reason for picking any that the Trust selects. Without such information, the EIS appears to be legally insufficient to comply with the CEQ regulations.

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## ENDNOTES

*As part of the Golden Gate National Recreation Area, the Presidio's significant natural, historic, scenic, cultural and recreational resources must be managed in a manner which is consistent with sound principles of land use planning and management, and which protects the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area and cultural and recreational resources.”*  
(Presidio Trust Act)

The Purpose and Need Statements are based on the Trust's own interpretation of the “Objectives” of the Act to Establish the GGNRA. The General Objectives set forth in Presidio Trust Board Resolution 99-11 dated March 4, 1999 are:

- *To preserve and (where appropriate) enhance the historical, cultural, natural, recreational, and scenic resources of the Presidio.*
- *To address the needs of Presidio visitors, tenants, and residents for community services such as transportation, water, power, waste management, and public safety (among others) in an environmentally responsible manner, while respecting neighboring communities.*
- *To increase open space, consolidate developed space, and provide for appropriate uses of the Presidio, including uses that involve stewardship and sustainability, cross-cultural and international cooperation, community service and restoration, health and scientific discovery, recreation, the arts, education, research, innovation, and/or communication.*
- *To sustain the Presidio indefinitely as a great national park in an urban setting.*

Culture” and “arts” are terms used in national parks regulations to refer to the anthropology, archeology, history and practices of peoples related to the resources of the park, not to introduced elements of “high” culture, such as contemporary art, that are unrelated to the resources of the park. Misuse of these terms by the Trust does not establish a need for a contemporary art museum in the Presidio. National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties, U.S. Department of Interior, National Park Service.

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## XII. CONCLUSION

For all the above reasons, the Trusts documents are legally inadequate. In addition, planning for the proposed new construction they describe should be halted. Future actions of the Trust must be commenced only with respect for the mandates of the entire law applicable to it, including requirements that the Trust PREVENT, not PROMOTE, development in the Presidio National Park, and most of all, in the single most important small area of the Presidio, the Main Post.