

NEPA and NHPA Comments to the on the SDSEIS, RDMPU and RDFOE  
(including comments on the DSEIS and DMPU)

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on behalf of Save the Presidio  
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NEPA (National Environmental Policy Act)

1. Deficient Analysis and Statement of Reasonable Alternatives to the Preferred Alternative/Proposed Action
  - a. The SDSEIS/DSEIS fails to:
    - i. Identify a number of real alternatives to accomplishing the purpose and need claimed;
    - ii. Provide a full and fair discussion of the reasonable alternatives that would avoid or mitigate environmental impacts and enhance the human environment;
    - iii. Present the environmental impacts of all the reasonable alternatives in comparative form, sufficiently defining the issues between them to thereby provide clear choices between them by:
      - objectively evaluating all reasonable alternatives;
      - giving substantial treatment to all reasonable alternatives;
      - and
      - discussing the reasons why any of the alternatives have been eliminated
    - iv. Include a summary which sufficiently and accurately summarizes the principal conclusions, areas of controversy and the issues to be resolved with respect to the choice among alternatives
  - b. The Claimed Purpose and Need is Deficient

It is so vague as to give no effective basis for determining what the reasonable alternatives are: "The Trust envisions the Main Post...as the cultural and civic center of the Presidio, a unique and dynamic urban national park. [A] major cultural institution in the Main Post would serve as a catalyst for attracting other comparable uses to the Main Post's historic buildings, bring people to the Main Post and contribute to making the Presidio a great national park." (DSEIS, 4). Or, in an equally oblique

expression, “(T)he purpose and need ...(is) to add vitality to the Main Post”. (DSEIS, 52)

How do we determine what the “need” is to bring more people to the Main Post than would be coming there in the ordinary course of events, or with less environmental impact consequences than what it is that is sought to be constructed there under the Preferred Alternative? What is the “need” for a “catalyst” for “comparable uses”? What qualities is it that are sought to make the Main Post (presumably more) “unique”, “dynamic”, “urban”, so that it can be (presumably more) part of a “great national park”?

The reason the claimed purpose and need remains so oblique (thereby frustrating a determination of what the reasonable alternatives would be) is because it is entirely opportunistic, and is not grounded in any objectively determinable purpose and need. What the Trust is doing is proposing a radical transformation of the Main Post, which it concedes is being done simply “in order to take into account several proposals, including the art museum, the lodge, an...expansion of the theatre” not previously made. (SDSEIS,1). The consequence of the claimed purpose and need being entirely opportunistic is that it is formulated so that only one of the alternatives can fulfill it: The Fisher museum, the Larkspur hotel and the theatre expansion.

This “stacked deck” is further evident in two developments, both of which preceded the DSEIS. The first was the issuance of the RFP in 2007, following Fisher’s proposal to build a museum the NHLD to house his private art collection (DSEIS, 4). The RFP prescribed both the building and the site that Fisher wanted: a 100,000 sq. ft. “cultural institution” to be sited at the very top, center and overlooking the Main Parade Ground, where Fisher has demanded-- and continues to persist in demanding-- that his museum be built, the RFP even prescribing that the building have flat roofs to accommodate outdoor sculptures. The second development was the April, 2008 rejection by the Trust of the Presidio Historical Association’s RFP bid (“PHA’s RFP bid”) which proposed a history museum ( about half the size of the Fisher). The Trust nevertheless included the history Museum as an alternative in the June, 2008 DSEIS, albeit then an entirely *faux* alternative. In sum, one of the three principal NEPA alternatives was DOA, at the hands of the Trust itself.

The June, 2008 DSEIS suggests why the PHA’s RFP bid was rejected: Fisher offered money to build, PHA could not. (DSEIS, 3-4). Although this may be a reason to reject an RFP bid, it is not a legitimate reason for limiting or rejecting viable NEPA alternatives that satisfy (an albeit oblique) claim of purpose and need where they have , as here, substantially less environmental impacts. For nowhere in the SDSEIS or DSEIS is it claimed that the Trust could not itself fund the PHA museum or, with the PHA, raise the funds by contributions. (Indeed, PHA’s offer to do so was

spurned by the Trust.) It would entirely undermine the purposes of NEPA if federal agencies like the Trust could avoid the “hard look at all reasonable alternatives” NEPA requirement and justify their consequent environmental conduct based on the unspoken premise of financial cost, especially where, as here, there is not only record that that the Trust could not fund the alternative, over time, from it’s revenues or contributions but the Trust’s published financial reports and budgets reveal that it receives, (tax free) 10’s of millions of dollars a year in rental income over and above its operational costs and so available to spend on improvements. For example, its recent budget includes a five year \$45 million construction rehabilitation plan for the Montgomery Street Barracks. Thus, the PHA alternative failed to get the NEPA required “hard look” not because the Trust didn’t have the money , but because decided that it wouldn’t spend it for that alternative.

- c. The Museum-Lodge-Theater Alternatives 2 and 2A are NEPA Irrelevant Because They Violate the One-Up/One-Down Rule.

See the July 13, 2008 letter brief by Earth Justice submitted to the Trust. Our position can be summarized: No building (and particularly no building in the area of the Main Post) of size comparable to the 70,000 sq. ft. museum has been identified for demolition in the SEIS or MPU documents. Accordingly, the One-U/One-Down rule would be violated by building the museum as proposed in DSEIS Alternative2/2A or the SDSEIS Preferred Alternative.

- d. All the Reasonable Alternatives Are Not Addressed in the DSEIS

The reference to hidden financial considerations brings us to another, more pervasive deficiency infecting the alternatives presented: The wholesale failure to consider, for each alternative, an incremental approach: a phasing in over time of the various of the components of the alternatives so that the extent to which purpose have been satisfied or not and the need and the environmental consequences of the increments implemented can be assessed, and more informed determinations made whether, when and how to further proceed. Evaluation of this set of alternatives would make some evident as more favorable than others, both in terms of the opportunity to avoid/mitigate adverse environmental consequences and, by allowing for an expanded time line, increasing the opportunity to fund various alternatives.

For example, beginning with a greening of the parade ground making it into an attractive civic space, coupled with a civic center in a rehabbed,

centrally located Main Post building and a robust program of civic events and celebrations; and then rehabbing the other barracks buildings with first floor visitor amenities to enhance the parade ground experience, and upstairs tenants. (Essentially, Alternative 1.) These new elements may well bring the desired number of people to the Main Post and tenants for the upper floors of the barracks buildings, all with far lower environmental costs than the imposition on a large art museum and hotel complexes. Then, depending on the degree of satisfaction achieved with respect to purpose and need and the assessment of the further environmental costs to be incurred, a decision informed by experience could be made whether to proceed with a new construction history museum (Alternative 3) or other institution (Alternative 2). But the alternatives as stated in the DSEIS foreclose this analysis of alternatives because they are not formulated as time-phased/interim goal achievement assessed/longer-term funding (and therefore more financially feasible) alternatives.

The analysis and statement of alternatives in the DSEIS is not saved by the availability of “mix and match” among the various components of the numbered alternatives stated because the components are so disparate and an assessment of cumulative effects becomes virtually impossible.

Nor does any notion of wholesale approval of a mega-alternative alternative comprised of a number components (for example, the mega-plan Preferred Alternative 2) and implemented in stages depending upon the interim decisions fo the proponent, because that would be an entirely self-governed, discretionary enterprise, full authorization having been given for the mega-plan in its entirety.

What is needed, but missing from the SDSEIS and DSEIS, is a statement of purpose and need that reasonably defines their determinants, and alternatives with timeline and other phased, objectively determinable determinants for the accomplishment of the defined purpose and need. (See subsection. 1.c, second par., above.)

The analysis and statement of alternatives is deficient in yet another other important respect: the absence of a developed alternative locating the museum at the Crissy Field Commissary/ Sports Basement. Alternative 1 is stated as an alternative embodying the 2002 PTMP and as the NEPA “no action” alternative (DSEIS , 9). Yet it does not mention a museum at the Crissy site, albeit that the PTMP provides for just that. No explanation is given for this. (Unless the following completely incomprehensible reference is meant to do so: “The most suitable offsite location... for the proposed action (the Commissary at Crissy Field) (is) being analyzed for purposes of informing the public and decision-makers of the consequences of selecting an alternative Presidio site in both a rehabilitated building and as new construction.”) The Crissy alternative could be developed with a pedestrian, people moving facilities and traffic

circulation that would integrate with the Main Post, especially since both visually and otherwise physically, Doyle Drive will underground at the north end of the Main Parade Ground, providing for a visual and physical integration of the museum with the Main Post. This alternative was nowhere presented in the DSEIS.

In sum, of the four nominal alternatives, the DSEIS presented only one substantive alternative to the Fisher-hotel-theater ( Alternative 2/2A; the SDSEIS Preferred Alternative): Alternative 3 (PHA Museum) was rejected even before issuance of the DSEIS; Alternative 4– Status Quo ,doing nothing to enhance the Main Post, was simply an alternative to 1, 2 and 3, but not an alternative to accomplishing the claimed purpose and need, leaving just Alternative 1 as the only option to museum-hotel-theater Alternative 2/2A.

Without a revised, sufficiently articulated statement of purpose and need so that the reasonable alternatives to accomplishing them can be formulated, and without the addition of incremental/phased alternatives and the Crissy Field alternative, the DSEIS and SDSEIS fail to satisfy the NEPA requirements set forth in subsection 1.a, above and are, therefore, fundamentally deficient.

2. The Cumulative Impacts Analysis is Flawed
  - a. The NEPA requirements are not met in the SDSEIS or the DSEIS:
    - i. No identification and assessment of and differentiation between the incremental impacts of the proposed action/preferred alternative and the other reasonable alternatives (cumulative impacts on resources when added to past, current and foreseeable later actions.)
    - ii. There is a lack of data and/or a convincing rationale for the selection of data in the undocumented assertions of no significant impact.
  - b. The DSEIS Cumulative Impacts Section 3.12 consistently fails to meet these requirements (See, esp. pp. 222-236.) Often, the incremental effects are not stated at all, just the claimed end results, typically without an analysis or explanation as to any differences in either the incremental cumulative effects or the different actions implicated in the different alternatives.

For example: Transportation (DSEIS, 222-224; SDSEIS 160-162) – growth in traffic volume would “adversely affect” traffic at intersections, but we don’t see the cumulative total or the incremental increases; Air Quality (DSEIS 225; SDSEIS 163) would be exacerbated for carbon monoxide, ozone and particulates, but we don’t see the cumulative total; Noise (DSEIS 225-226; SDSEIS 163-164) is claimed (conclusory) to be temporary, limited and minor, but with no incremental measurements; Historic Landmark District (DSEIS 227-228; SDSEIS 164-166) – the standard acknowledged is to “minimize harm”, but the cumulative effect of the proposed action and the alternatives is not assessed and a determination made as to whether the standard will be met, and if so, by which ones; Archeology (DSEIS 232-233; SDSEIS 170-172) – the impacts of a number of actions are recounted without a cumulative assessment of all the impacts together; and Visitation (DSEIS 234-235; SDSEIS 172-174) – again, recounts the visitor experiences affected by a number of actions without an overall, that is cumulative, assessment of the visitor experience.

- c. In sum, there is no cataloguing of either the relevant past actions or the relevant contributing present actions with details as to scale for the incremental impact of each and their total cumulative impact. Nor is there an aggregate assessment of the present situation plus the increments added by the preferred alternative (or the other alternatives), and no disclosure of the Trust’s method of analysis and its reasons for choosing cataloguing or aggregation. Finally, the statement of conclusions that there will be cumulative impacts or that they are not significant, without quantification or articulation permitting independent assessment, are not sufficient. Accordingly, the NEPA requirements in subsection 2.a(i), above, are not met.

#### NHPA (National Historic Preservation Act)

1. 36 CFR 800.5(1) is explicit that, “An adverse effect is found when an undertaking may alter... the characteristics of a historic property...in a manner that would diminish the integrity of the property’s...*feeling or association*.” And 800.5 (2) emphasizes this in prescribing that, “Adverse effects on historic properties include...(v)Introduction of visual (and) *atmospheric* elements that diminish the integrity of the property’s significant historic features. (Emphasis supplied.) The DFOE fails to assess the adverse effect of the Preferred Alternative’s museum, lodge and theater expansion (but most importantly, the museum) in diminishing the integrity of the Main Post’s feeling and association, particularly including the atmospheric elements that will diminish its significant historic features, all as required by the explicit terms of 36 CFR 800.5.

3. The museum would severely diminish the historic integrity of Main Post in the following very significant respects:
- a. Its location -- at the top, center of the Main Post's Main Parade Ground, the "heart" of the "heart" of the NHLD. This is a dominating location, with a grand, unobstructed sweep over all parade grounds, all the way down to the Bay. The museum will be physically imposed as the centerpiece -- the lynchpin -- of the NHLD. Correspondingly, it would be viewed, unobstructed, from every corner and vantage point of the parade grounds. In sum, the Main Parade Ground will be reduced to being the front lawn for the museum.
  - b. Its architecture/size -- a modern, largely glass and steel building, with extensive hardscape extending almost all the way to the perimeter of the its site, with a large overhanging, essentially flat roof. The "moat" around much of the building will reveal its full size of the portion otherwise below grade. The extensive hardscape will show massive steel sculptures only partially "hidden" from view since they will be fully visible in all the proximate approaches to the building from the south or east.
  - c. Its function -- showing to the public an extensive private contemporary art collection, the host site for traveling/guest exhibitions, with some 50,000 sq. feet of gallery space (about as much as the entire present San Francisco Museum of Modern Art) would impose a purpose, function and use, in the language of the foregoing regulation, "atmospheric elements" completely anomalous to the history of the Main Post site, including the rich ceremonial history of the parade grounds the museum will dominate. The atmospheric element will be manifest, visually: the ceiling-to-floor large plate glass windows comprising the outer walls of much of the museum facing north over the parade grounds, and also significantly east and west, will display and project out to the parade grounds the often large, abstract and intensely hued contemporary art inside; and the inside lighting, especially in the early dusk of the late fall, winter and early spring will significantly increase this adverse effect, making the contents of the art museum clearly visible from the parade grounds and any pedestrian approach to the museum.
  - d. An important additional note regarding the manifesting of the function of the museum: There can be no doubt that the museum will be heavily promoted as the main attraction of the Main Post-- at its opening, but even more importantly, regularly by the Trust and/or Mr. Fisher, both for its resident collection, but additionally every time a visiting exhibition is hosted there. In this connection, we note the provision in 36 CFR 800.5(a)(1) that, "Adverse effects may include reasonably foreseeable effects...that may occur later in time." The promotional consequences of the museum would be just that kind of serious adverse effect.

- e. There can be no doubt that individually and together these all constitute adverse effects of the most serious and substantial order, and ones clearly cognizable under the express terms of the applicable regulation. It is, of course, extremely unlikely that they could ever be sufficiently mitigated, but if so, it would surely require mitigation of the most comprehensive kind and to the most extensive degree.

#### Incorporation by Reference

We have purposefully limited our comments to avoid, or at least minimize redundancy with the comments being made by others that are critical of the Trust's NEPA and NHPA document compliance. We have done so because we are incorporating here by reference, as if set forth in full, those comments being concurrently submitted by: the Cow Hollow Association, Earth Justice/NCPA, the National Park Service's 213 Report, the National Trust for Historic Preservation, Neighborhood Associations for Presidio Planning, the Marina Community Association, the Presidio Historical Association, the Presidio Neighborhood Representative Work Group, and Donald Green and Amy Meyer.