

# ENVIRONMENTAL ASSESSMENT OF PROPOSED REGULATIONS

The Presidio Trust  
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## I. The Proposal

The Presidio Trust (the "Trust") is considering publishing in the Federal Register the regulations included herewith (the "Regulations") as proposed regulations pursuant to the Trust's rulemaking authority under § 104(j) of the Presidio Trust Act, Title I of P.L. 104-333 (enacted Nov. 12, 1996). Staff of the Presidio Trust have prepared this document for review by the Executive Director prior to consideration of the Regulations. The need for the Regulations, as well as alternatives considered, are discussed at greater length in the preamble to the Regulations, which supplements this document.

## II. NEPA Compliance

The Trust is subject to the provisions of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* NEPA requires an interdisciplinary study of the impacts associated with certain Federal actions. Under regulations issued by the Council on Environmental Quality, the Trust is required to prepare an environmental assessment ("EA") of any proposal covered by NEPA which is not categorically excluded from preparation of an EA or an environmental impact statement ("EIS") pursuant to procedures adopted by the Trust to implement NEPA. 40 CFR § 1501.4(a) & (b). Agencies are also permitted to prepare an EA in order to assist in agency planning and decisionmaking. 40 CFR § 1501.3(b).

The EA process ensures that environmental information is available to the officials charged with decisionmaking authority before decisions are made. An EA is to be "a concise public document . . . that serves to [b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 CFR § 1508.9(a).

### A. Need for and Environmental Effect of the Proposal

Pursuant to the Presidio Trust Act, the Presidio Trust obtained administrative jurisdiction over a substantial portion of the Presidio on July 1, 1998. This property, over which the federal government has exclusive jurisdiction, was previously covered by regulations of the National Park Service. These regulations governed conduct in the Presidio, including such issues as resource protection, public use and recreation (36 CFR Part 2); vehicles and traffic safety (36 CFR Part 4); and commercial and private operations (36 CFR Part 5).

Just prior to receiving administrative jurisdiction over this portion of the Presidio, the Trust adopted final interim regulations that closely parallel the National Park Service regulations. See 63 Federal Register 35693 (June 30, 1998). The Regulations included herewith make certain changes in the framework for management of that portion of the Presidio over which the Trust now has administrative jurisdiction. They are intended to maintain the physical status quo in the Presidio and to not effect any significant change in the Presidio's human environment or that of the surrounding environs.

**B. Alternatives Considered and Their Environmental Effects**

There are limited practical alternatives to the proposed action. If the Trust were to take no action, and instead rely on its interim final regulations, the management of the Presidio would not adapt to the different mission of the Presidio Trust as opposed to the National Park Service. As a result, the Trust has rejected this "no action" alternative.

The Trust has considered a limited range of alternatives in drafting the Regulations. These are discussed more fully in the preamble to the Regulations. Each of these alternatives, like the proposed action, would effect no significant change in the physical status quo in the Presidio.

**C. Agencies and Persons Consulted**

The Trust is authorized to adopt its regulations in consultation with the Secretary of the Interior. That consultation took the form of a proposal from the National Park Service, as well as several discussions between staff and attorneys for the Trust and staff and attorneys for the National Park Service and the Department of the Interior. The United States Park Police, which operates under the aegis of the National Park Service, was also consulted concerning law enforcement issues.

**III. Endangered Species Act Compliance**

Under the Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*, federal agencies are required to consult with the U.S. Fish and Wildlife Service to ensure that certain actions authorized, funded, or carried out by the agency do not jeopardize the continued existence of listed species or critical habitat. The Presidio of San Francisco is home to certain species listed under the Endangered Species Act. Because the proposed action will not change the physical status quo of the Presidio, the Trust has determined that consultation with the U.S. Fish and Wildlife Service is not required.

#### **IV. Section 106 Compliance**

Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*, mandates that federal agencies take into account the effects of their actions on properties listed or eligible for listing on the National Register of Historic Places. Because the Presidio is a National Historic Landmark, undertakings with the potential to affect the historic character of the Presidio require Section 106 compliance review to ensure protection of the Presidio's resources.

Although certain actions that may be taken by the Trust in the future under authority of these Regulations may require Section 106 review, the Trust has determined that the adoption of these Regulations is not an action that will, in and of itself, require Section 106 review. As discussed above, these Regulations are intended to maintain the physical status quo in the Presidio. As such, the Trust does not anticipate that its proposal or adoption of these Regulations will affect the characteristics and properties contributing to the Presidio's status as a National Historic Landmark.

#### **V. Conclusion and Recommendation**

In short, the publishing and adoption of the Regulations will have no significant adverse impacts on the human environment because the Regulations are effecting no significant change in the physical status quo. As such, these Regulations will have no adverse impacts on public health, public safety, threatened or endangered species, sites listed on or eligible for the National Register of Historic Places, or other unique characteristics of the area. Promulgation of these Regulations will not violate any federal, state, or local law; in fact, it will fulfill the requirements of the Presidio Trust Act.

The Regulations maintain the substantive physical status quo in the Presidio and surrounding environs. Their proposal and promulgation therefore does not qualify as a "major Federal action significantly affecting the quality of the human environment," 42 U.S.C. § 4332(C), which would require the preparation of an EIS under NEPA and its implementing regulations. As a result of this review, it is therefore recommended that the Executive Director of the Presidio Trust approve a finding of no significant impact ("FONSI") with respect to the adoption of these Regulations.