



## Via E-mail and U.S. Mail

July 11, 2008

David H. Grubb  
Chair, Presidio Trust Board of Directors  
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### Re: Presidio Trust Management Plan/DSEIS Main Post Update

Dear Mr. Grubb:

I am writing on behalf of the National Parks Conservation Association to express its opposition to the Presidio Trust's proposal to construct a 100,000 square foot building (Contemporary Art Museum) and a 95,000 square foot complex (Park Lodge) within the Main Post area of the Presidio. *See* Presidio Trust Management Plan Main Post Update Draft Supplemental Environmental Impact Statement (June 2008) ("DSEIS") at 26. While the Trust's compliance with both the National Historic Preservation Act and the National Environmental Protection Act with respect to these proposed projects is also of concern, our focus here is on the Trust's disregard of an important restriction included in the enabling legislation for both the Golden Gate National Recreation Area and the Presidio Trust itself – *i.e.*, the general prohibition of new construction within the Presidio.

The only exception to this statutory restriction allows for replacement of a demolished structure with a new structure of similar size. Nowhere does the Trust point to any building proposed for demolition as large as the proposed Art Museum and Park Lodge. Instead, the Trust takes the position that:

Statutory analysis suggests that a replacement building need not be constructed in the same footprint as the demolished building (that is "one up/one down"). Instead, interpretation of the Trust Act, its legislative history, and past U.S. Army and NPS practices indicate that the Trust can demolish structures and "bank" or hold in reserved the square footage for an indefinite period, drawing upon it later to provide the basis for building additions or new construction . . . [in] the Presidio.

DSEIS at 258.

The Trust could not be more wrong. This statutory interpretation was decisively rejected *twenty-two years ago* by the Federal District Court for the Northern District of California. *See*

David H. Grubb

July 11, 2008

Page 2

*Sierra Club v. John O. Marsh*, N.D. Cal. C-86-0289 WWS, Findings of Fact and Conclusions of Law (Feb. 14, 1986) (“Ruling”), Attachment 1 hereto. That case involved the 1978 amendment to the legislation establishing the Golden Gate National Recreation Area” (“GGNRA Act”), 16 U.S.C. § 460bb, which explicitly provides that:

New construction and development within [the Presidio] . . . of lands under the administrative jurisdiction of a department other than that of the Secretary [of the Interior] is prohibited, except that improvements on lands which have not been transferred to his administrative jurisdiction may be reconstructed or demolished. ***Any such structure which is demolished may be replaced with an improvement of similar size***, following consultation with the Secretary . . .

16 U.S.C. § 460bb-2(i) (emphasis added). In the subsequent legislation establishing the Presidio Trust (“Trust Act”), 16 U.S.C. § 460bb Note, Congress was just as explicit in its decision to retain this restriction. Finding that “removal and/or replacement of some structures within the Presidio must be considered as a management option in the administration of the Presidio,” 16 U.S.C. § 460bb Note § 101(6), Congress directed the Trust to develop “a comprehensive program for the management of those lands and facilities within the Presidio which are transferred to the administrative jurisdiction of the Trust,” with “***new construction limited to replacement of existing structures of similar size in existing areas of development***,” *id.* § 104(c)(3) (emphasis added).

Accordingly, the analysis and holding of the Court in 1986 regarding the GGNRA Act’s restriction on new construction is equally applicable to that of the Trust Act. That litigation challenged the decision of the U.S. Army, which had administrative jurisdiction over the Presidio at the time, to approve construction on Crissy Field of a large new post office serving the Marina. The Court found “no ambiguity in the statute, in that it permits . . . only replacement of a demolished structure by one of similar size.” Ruling at 3. Much like the Trust in the present case, “the Army has not demonstrated that the new post office replaces a demolished structure, as the statute requires.” *Id.* at 4. Also much like the Trust in the present case, “the Army makes a rather strained argument that . . . it has demolished various obsolete and unsafe structures and, as a result, has accumulated a credit of 727 thousand square feet” to apply to new construction. *Id.* But, as the Court noted:

Had Congress meant to adopt the Army’s interpretation, to the effect that new construction is permitted so long as it doesn’t exceed the square footage of improvements which existed in the Presidio at the time of the adoption of the statute, it would readily have said so. But it didn’t say that. What it said was that the Army can replace a demolished building by one of similar size.

*Id.* As the Court pointed out, the contemporaneous interpretation of the GGNRA Act by the Department of the Interior supports this conclusion. In a 1979 document entitled “Summary of restrictions on new construction in the Golden Gate National Recreation Area pertaining to lands

David H. Grubb

July 11, 2008

Page 3

not under the administrative jurisdiction of the U.S. National Park Service,” the Service explained:

The first requirement for building a new structure is that a building of “similar size” must be first demolished. A number of smaller buildings can not be demolished to accumulate credit for one large building. . . . These requirements are Federal law.

*See* Attachment 2 hereto. *See also* Memorandum to Regional Director, Western Region, National Park Service, from Field Solicitor, San Francisco, Re: Public Law 92-589 New Construction within Golden Gate NRA (July 5, 1979) (Attachment 3 hereto) (explaining that “[e]xpanding up or out would be contrary to the ultimate objective of having all of the land within the Recreation Area administered by the Secretary for use, preservation and protection of the resources and recreational open space”).

Thus the GGNRA Act authorized only what has been dubbed “one up, one down” construction and what one journalist has characterized as an open space “cap and trade” system. *See* *Pleasure Grounds and Iron Fences: Local and Federal Battles for Open Space in the Presidio of San Francisco, 1776-2001*, 17 *J.L. & Pol.* 797 (Fall 2001) at 826 (also noting at 838 that “the Trust [Act] did preserve many of the open space concessions that residents had won from the Army in the 1970s and 1980s. First, the Act preserved the GGNRA provisions that new construction would be limited to [demolished] buildings of ‘similar size’ in areas of prior development.”)

Finally, the Court concluded that:

It is thus clear that this statute has been carefully considered and fully understood by responsible agencies of the government. Nevertheless, . . . the Army . . . [is] proceeding as though the statute did not exist at all.

*Id.* at 4.

The Presidio Trust is repeating that mistake by proposing to construct buildings far larger than any it proposed to demolish. None of the buildings planned for demolition even approach the 100,000 square foot Museum and 95,000 square foot Lodge it plans to construct. From information we have obtained from the Trust, we understand that the buildings proposed to be demolished are (building number followed by square footage): 3 (3,610), 34 (31,824), 40 (8,216), 41 (8,298), 63 (21,067), 93 (12,800), 97 (3,029), 98 (449), 113 (1,595), 118 (1,338), 201 (6,100), 204 (12,193), 230 (2,758), 231 (3,842), 385 (10,580) and 386 (14,218). We have been unable to discover any information about the height of the perhaps-to-be-demolished and proposed new buildings. Moreover, while the Trust states that it *may* demolish up to a maximum of 145,000 square feet of existing construction, it proposes to construct 265,000 square feet of new construction. DSEIS at S-7. Thus even the aggregate of the Trust’s demolitions does not support the new construction. To the contrary, it represents a 20% *increase* in the construction footprint of the Main Post.

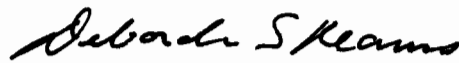
David H. Grubb  
July 11, 2008  
Page 4

The National Parks Conservation Association and Earthjustice sincerely wish to avoid the need for litigation to enforce the well-established new construction requirements of the GGNRA and Trust Acts. We are convinced that you will share our concern about this, since, unlike the Army, the mission and mandates of the Trust reflect the overarching conservation objectives of Section 1 of the GGNRA Act, 16 U.S.C. § 460bb-1 (*see* Trust Act, 16 U.S.C. 460bb Note at § 104(a)). We need not remind you of the Congressional finding in the Trust Act that reads:

[A]s 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 . . .

We respectfully request that the Trust review its legal obligations and reconsider the construction the Contemporary Art Museum and Lodge as shown in any of its alternatives other than *status quo*. We urge you to act quickly to resolve the concerns we have expressed and would be happy to meet with you to discuss this matter.

Sincerely,



Deborah S. Reames  
Attorney for NPCA

cc: Craig Middleton  
Executive Director  
Presidio Trust

David H. Grubb  
July 11, 2008  
Page 5

**ATTACHMENTS TO JULY 11, 2008 LETTER  
TO DAVID H. GRUBB**

Attachment 1:

Findings of Fact and Conclusions of Law, *Sierra Club v. John O. Marsh*,  
N.D. Cal. C-86-0298 WWS (February 14, 1986)

Attachment 2:

National Park Service, Summary of Restrictions on new construction in the  
Golden Gate National Recreation Area pertaining to lands not under the  
administrative jurisdiction of the U.S. National Park Service (1979)

Attachment 3:

National Park Service Office of the Solicitor, San Francisco Field Office,  
Memorandum from Field Solicitor to Regional Director, Western Region,  
National Park Service, Re: Public Law 92-589 New Construction within  
Golden Gate NRA (July 5, 1979)