

DRAFT PHA Issue List (5)
September 13, 2010

TO: Presidio Trust, SHPO, NPS, ACHP

FROM: Presidio Historical Association

RE: Presidio Trust Draft Programmatic Agreement and Main Post Update, both of August, 2010
MAJOR CONCERNS AND ISSUES

We offer this partial list of issues and concerns raised by the subject documents. This paper is intended to focus issues, stimulate discussion at the workshop meetings, and hopefully stimulate prompt resolution of the issues. The list is not complete. After the workshop meetings, the PHA will summarize its response, and provide a more comprehensive list of issues, concerns and questions concerning these Trust documents. We have noted why concerns arose, noted relevant procedures and laws, and added our recommendations. We recognize of course, that the Trust, signatory parties, or others may have other effective proposals for resolving these issues. We hope that the Trust's meetings and subsequent discussions with signatory and consulting parties that follow them, will draw out all constructive suggestions, and will result in satisfactory resolutions of these issues, prior to the time when consulting party signatures are requested.

MEETING TIME

1. Issue: A fundamental concern is that the Trust has scheduled what appears to be an inadequate amount of meeting time to meaningfully discuss and timely resolve the many issues raised by its new documents. Just the few issues listed in this paper would likely require more time than the Trust's two brief workshops will permit. The PHA also believes there has not been adequate consultation with all consulting parties to avoid, minimize, or mitigate the proposals' adverse effects, as required by 36 CFR 800.6(b)(2).

Recommendation: More consultation and resolution meetings are requested prior to the signature phase, (not workshops) when all potential parties can simultaneously discuss, respond to proposed solutions and work with the Trust to resolve unresolved issues before signatures may be reasonably requested. As an immediate interim measure, please consider extending the time of the scheduled meetings.

A. PROPOSED PA ON MAIN POST UPDATE

Background: (Sequence issues) Para. E. 2. Specifies that HSRs will be developed following the execution of the PA and completed prior to additional design development. It refers to Appendix K, where more details are set out. The draft PA focuses primarily on steps to be taken after signing. However, many of the proposed actions need to be taken BEFORE signing by concurring parties if the logic and integrity of the process is to be maintained. Especially see items 2 through 6 below.

2. Issue: The PA represents that all HSRs will be completed, but is unclear about the timing and sequence for the CLRs, AMAs and Design Guidelines—other important, relevant, required and related studies and projects referred to elsewhere in the PA.

Recommendation: Please confirm that all these studies will be completed prior to signature by the parties and prior to the agency settling on its plans, in order to ensure that the Board has full information to “take into consideration” adverse effects as required by the NHPA and to “consider all prudent and feasible alternatives” to avoid an adverse effect on the NHLD.

3. Issue: The term “additional design development” appears to be the wrong term in this context. (line 394) It inaccurately implies that the Trust need not re-examine or redo design work already completed, in light of what we all assume will be solid factual analyses and recommendations in the HSRS, CLRS, AMA reports and Design Guidelines. The Trust must be prepared to change locations and restart its design work on any or all of its projects if a fair reading of the three classes of studies suggests such steps are needed to prevent adverse effects. The term “additional” also implies that design work may be currently taking place.

Recommendation: Please confirm that all design work has been halted, and will not resume until completion of these requirements. (See recommended sequence, para. #6, below.) And for these reasons, it is also recommended that the term “additional” be stricken.

4. Issue. In this context, (line 393) the term “following” suggests the Trust may wish parties to sign an Agreement enshrining the new MPU, BEFORE learning the results of the three types of studies and BEFORE deciding on the Trust’s responses to those studies. (Ordinarily, these studies would have been completed long before the Trust made ANY planning decisions or undertook ANY design work in the Main Post). The results of the studies and knowledge of the Trust’s responses are necessary for the parties to consider BEFORE they can be reasonably expected to decide whether they can sign the proposed PA.

Recommendation: Similarly, we recommend that the words “developed following” be stricken, and replaced by the words “completed prior to”.

5. Issue: In Appendix K, the project sequence charts show public involvement as a preliminary “public information session” and a “concurring party rev.” The sequence needs to permit both signatory and consulting parties to not just receive information, but to also offer solutions and ideas, and to participate through the point in the process where critical issues are resolved and compliance with the Secretary’s standards guaranteed.

The purpose of the “consulting parties” is to consult, and they should be involved in review and comment at more milestones than currently proposed. Greater involvement of the consulting parties can only benefit the overall project.

Recommendation: The process should insure that signatory and consulting parties are not just “informed” of the Trust proposals, but also review and have a “back and forth” discussion

(consistent with the spirit of Sec. 106) with sufficient power to insure that resolutions of issues raised by any party will be satisfactory to the signatory and consulting parties and consistent with the Secretary's standards. The process should also provide more public comment and participation during design and implementation.

6. Issue: In none of the Appendix K groups is there a specific opportunity for input on Buildings 40 and 41. The processes applicable to other buildings should apply to these two as well. The issues understandably need to be resolved in light of a CLR and HSR, and resolved prior to signing, rather than in a procedure with unpredictable future actions. The Trust cannot meet its obligations under the NHPA to evaluate all adverse effects and cumulative effects, and resolve matters in consultation with the signatory parties, without including the fate of these buildings in its overall cumulative effects analyses, prior to signing.

Summary of Required Sequence:

The following should occur, in sequential order, prior to signing of the PA so that the process, studies, documents, NEPA and NHPA analyses, consulting parties and designs are all appropriately and completely informed at each stage of the process.

1. Under NEPA, purpose and need to be updated in a new Supplemental EIS as recommended by the EPA, with particular emphasis on Hotel, Visitor Center and History Center.
2. A Presidio-wide potential site evaluation process should be undertaken, especially for the same three projects.
3. The CLRs, HSRs and AMAs should be completed and used, and Trust decisions and plans should reflect that use. HSRs should also be completed for Buildings 40, 41, and 385 (Herbst Hall).
4. All Buildings proposed to be demolished should also receive HABS documentation.
5. Propose Design Guidelines. Base proposal on recommendations of the CLRs, HSRs and AMAs. Hold hearings on proposal. Resolve issues with all signatory and consulting parties.
6. Update MPU, with Signature of a proposed PA to follow above steps.
7. Final EIS and ROD.
8. Begin design process as outlined in App. K, except providing more opportunity for consulting party review and hearing, and for resolution of outstanding issues.

Recommendation: Confirm that the Trust's decision process will include the above-described steps in sequential order.

NHPA Sec. 110 ISSUES, (esp. see 36 CFR Sec. 800.10)

Background: The Presidio Trust is not just another federal agency like DOD or DOA. It has an explicit mission imposed in the Presidio Trust Act to prevent development at least in its most historically significant area, to comply with “one down-one up” requirements of the Trust Act, and to be a responsible guardian and protector of the “most significant” part of a “most significant” historic site, the Main Post-- centerpiece of its National Historic Landmark District (NHL), the “most significant” class of US historic sites). This special mission to preserve and protect its historic areas means it cannot follow precedents set by agencies without comparable history missions. It has an extra measure of responsibility for history protection, (a responsibility also reflected in its statutory designation as a “Trust”).

7. Issue: The cited regulation requires the Trust to take action “to the maximum extent possible”, “as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking”. The proposed hotel, as new construction, could be located in dozens of different locations on the Presidio outside the historically sensitive Main Post, (or even outside the Presidio for that matter). In addition, because the HSRs, CLR and AMAs have not been completed, and because Trust decisions using that information have not yet been made, it is clear the consulting parties cannot reasonably be asked to sign a document finding compliance with Sec. 110 at this point in time.

The hotel also:

1. Has adverse effects on archeology area F-9,
2. Changes the character of the property’s use within the property’s setting that contributes to its historical significance. (See 213 Report.)
3. Creates a hard building plane/edge on the east edge of the Main Parade Ground that never existed, which creates a false sense of history regarding spatial definition. (See 213 report.)
4. Affects the feeling, setting and association of the Main Parade and all contributing resources within view, including Buildings 86 and 87. Also affects long-term tenants, such as The Bay School.

Recommendation: Perform appropriate site analyses at least for alternative hotel locations within the Presidio, perform analyses for the best use of Graham St. sites (for other foreseeable buildings and uses as well as hotel), complete the promised studies identified above, and in light of that information, make responsible professional decisions concerning the best use for the Graham St. site, and best (least destructive) site for a Presidio hotel.

FPO ISSUES

Background: It appears that following a conflict over issues of compliance with Trust demands, the last Trust FPO left Trust employment. Since that time, the Trust has refused to rehire an FPO, (and is currently not even soliciting FPO applicants), even though an FPO is required by the PA now in force. The Executive Director, who does not meet the FPO requirements in the current PA, has assumed the mantle of an FPO. The original PA was agreed to because at the time of signing, a qualified, responsible and independent FPO was on the Trust staff. Such an

independent FPO was needed then (and is needed now) because, in line with customary agency practice, he or she would give the public and other agencies confidence that an independent professional was looking after the public's interest in the Trust's history decisions. That is not now the case. The present draft PA relies on the professionalism and objectivity of the FPO to manage implementation of the agreement. But that responsibility is not credible when the FPO is also the chief proponent of the actions subject to FPO monitoring and review. An obvious conflict of interest exists.

It has also been suggested that the NHPA regulations nevertheless permit the Trust's Executive Director to serve as an FPO. But there are several reasons why that status should not continue.

A. As described in the current PA, (a contract now in effect), the FPO has specific qualifications and independent professional responsibilities that are to be exercised in order to protect the public. As the controversy with the last FPO appears to have demonstrated, the Executive Director (ED) can have a conflict of interest with an FPO who is doing a professional job, and who in part serves the public as well as the Trust. Without a separation of ED and FPO responsibilities, the public loses access to information and historic protection provided by a separate professional FPO, all of which it is entitled to receive under the PA language now in effect.

B. Whatever regulations might allow, they are overridden by more rigorous requirements in the current PA, and so at a minimum the old PA requirements must be followed in the new PA, irrespective of what the regulations may permit.

C. As mentioned above, the Trust has a clear and separate mission to protect its historic site, which other agencies do not necessarily have. Therefore, it is imperative that the true owners of the Presidio, the national public, be given the protection and professionalism of a separate FPO as set out in the PA now in effect, irrespective of what the regulations and current FPO might permit.

If such a qualified FPO is not required in the new PA, then the statutory default procedure, requiring each modification of a Presidio building to go through the full SHPO approval process should be imposed.

Issue: The draft PA does not require hiring of a separate FPO, with qualifications as set out in the current PA.

Recommendation: We ask that the Trust include provisions for an independent FPO with at least as rigorous qualifications as those set out in the current PA;

HERBST HALL

8. Issue: The procedure for this building is not spelled out as clearly as others.

Recommendation: Please confirm that before any decision is made as to the preservation, use, removal or demolition of this building, it will receive the same HSR, CLR, and AMA studies as others, and that decisions as to its future will be made in response to the facts and information so

generated. In addition, it should be given the same treatment as other buildings identified in Group A of Appendix K.

B. MAIN POST UPDATE (MPU)

Background: The following items refer to the MPU, Administrative Copy of August 2010, unless otherwise indicated.

9. Issue: After a selective overview of Presidio history, this MPU proposes to “update” (modify or amend) the Park’s master plan, (Presidio Trust Management Plan or PTMP) to permit major new construction in the single most historically sensitive Main Post area, which construction would be prohibited under the existing PTMP. While the current PTMP was the product of numerous public hearings, this MPU would permit the Trust to amend the plan without further public hearings on proposed amendments after completing the steps outlined in the newly proposed PA.

Recommendation: Hold public hearings on the Trust’s specific proposals for amending the PTMP after the required studies and design guidelines required by the PA are completed.

10. Background: Surprisingly, the Trust asserts that its proposed fourteen building hotel, (twelve of them new with 70,000 sq. ft. in the new buildings plus unspecified square footage in the two older buildings) to be built in the historically sensitive Main Post, constitutes a “small lodge” (at p. 16). It represents that building this lodge will overcome the Trust’s feeling that the Main Post is “empty and uninviting”. Such vague and misleading language is endemic in this MPU. The term “Small” (and the paragraphs that so use that term) can have no credible meaning when it is used to describe a 70-90,000 square foot collection of fourteen (14) hotel buildings. The Trust contention that the lodge will “contribute to visitors experience” in the “empty and uninviting” space is unsupportable and has no measurable criteria. That contention is not compared to the visitor experience of more logical alternatives, and does not constitute a valid reason for inflicting adverse effects on the NHLD. (The PHA and others have consistently advised that the Trust has no power under the Trust Act to undertake such construction.)

The Trust also now plans to build a National Park Visitors Center and a History Museum or Center. Those two efforts, if done in a first-class way, will draw far more visitors to the Main Post than any hotel, thereby overcoming that “empty feeling” described by the Trust. If there were to be any new construction at all, it should be of the Visitors Center and History Museum (that would be within the Trust’s mandate), rather than the proposed fourteen building hotel that would not.

Issue: It is clear that the History Center and Visitors Center have been foreseeable, and foreseen, for some time. Therefore, the Trust should have put those projects through complete NEPA analyses by this time, (prior to including them only in a “final” EIR). They should also be

evaluated as part of the HSR and CLR processes set out for other buildings in the PA main text and in Appendix K.

Recommendation: The PA and MPU need to require the appropriate studies and NEPA analyses of these two projects before proceeding to make or to implement any other project or site decisions in the Main Post.

11. Pershing Square:

Background: The maps illustrating Presidio history skip from 1908 to 1945, omitting a WWI era map. At the same time, we note that Pershing Square, memorializing the family of the nation's most eminent WWI figure, General Pershing, is shown in the MPU as being dramatically reduced in size and partially paved over.

Issue: There has been no discussion of any Trust plan to cut down or pave part of Pershing Square.

Recommendation: Reduction in size and managing the representation of archeological findings in Pershing Square should be made an integral part of El Presidio planning informed by a CLR and design guidelines. (Note however, that Pershing Square may also be potentially eligible as a contributing feature of the Main Post's landscape in the NHLD.)

12. Mitigation

Issue: There does not appear to be any mitigation described in the PA or the MPU. Adverse effects need to be mitigated, even if they have been reduced in severity. Minimization of adverse effects does not necessarily mean there should be no mitigation. It is anticipated that further minimization and avoidance of adverse effects will result from continued consultation meetings and the completion of the CLRs, HSRs, AMAs and Design Guidelines.

Recommendation: Complete required studies to document adverse effects and continue consultation meetings working to reduce adverse effects. Remaining adverse effects should be mitigated as resolved through meetings with signatory and consulting parties.

13. Cumulative Effects:

Background: The total cumulative effects of all projects in the undertaking on the Main Post cannot be known until after the required studies and design guidelines are completed. For example, the juxtaposition of the Anza Promenade with the hotel is unknown. No reasonably final visualization from ground level can be made until design guidelines for both projects are available.

Recommendation: Judgments concerning cumulative effects should be made only after consultation with all Signatory and consulting parties following completion of the HSRs, CLRs and AMAs and preparation of design guidelines. The FOE was prepared with the benefit of being informed by those studies and their information on cumulative effects. Therefore, it cannot be a part of the Trust's decision that "takes into account" those effects.

