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13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 PRESIDIO HISTORICAL ASSOCIATION;
17 and SIERRA CLUB,

18 Plaintiffs,

19 v.

20 PRESIDIO TRUST, a federal government
21 corporation,

22 Defendant.

23 Case No.

24 **COMPLAINT FOR DECLARATORY
25 JUDGMENT AND INJUNCTIVE
26 RELIEF**

27 **INTRODUCTION**

28 1. This action challenges the Presidio Trust's ("Trust") failure to comply with governing law in carrying out its management activities for the Presidio National Park, a part of the Golden Gate National Recreation Area ("GGNRA"). The Trust violated the Presidio Trust Act ("Trust Act"), Pub. L. 104-333, 110 Stat. 4097, codified at 16 U.S.C. § 460bb app., the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470 *et seq.*, and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, in creating the Main Post Update ("Update") to the Presidio Trust Management Plan ("Management Plan") and adopting its 2011 Record of Decision ("ROD").

1 2. Specifically, the Trust’s approval of the Update violates the Trust Act’s limits on
2 new construction. The Update calls for demolishing several structures, including buildings of
3 historic significance, and constructing a 95,000-square-foot hotel comprised of fourteen buildings.
4 The hotel will include 70,000 square feet of new construction, adding to other related new
5 construction for a total of 146,500 square feet on what is now largely open space in the Main
6 Post. The planned new construction will degrade the historic, cultural, and aesthetic values and
7 character of the Main Post, in direct violation of the duty imposed on the Trust by NHPA and the
8 Trust Act to protect those values and that character.

9 3. In issuing and approving the Update, the Trust also violated NEPA by failing to
10 prepare a legally adequate “Statement of Purpose and Need” in the Draft Supplemental
11 Environmental Impact Statement (“DSEIS”), the Supplement to the DSEIS (“SDSEIS”), and the
12 Final Supplemental Environmental Impact Statement (“FSEIS”) and by failing to consider a
13 reasonable range of alternatives.

14 4. The varying statements of purpose and need violate the statutory mandates of
15 NHPA and the Trust Act to avoid damage to the cultural, aesthetic, and historic value of the
16 Presidio. These statements of purpose and need fail to provide the objective or analytical basis
17 for comparison of alternatives and meaningful public comment required by NEPA. By using
18 multiple and ambiguous statements of purpose and need, the Trust produced an impermissibly
19 narrow environmental analysis that failed to identify or consider an adequate range of
20 alternatives to meet the requirements for historical and cultural preservation mandated by NHPA
21 and the Trust Act.

22 5. Plaintiff therefore seeks an order (1) declaring that Defendant’s analysis in its EIS
23 process for the Update to the Management Plan is inadequate as a matter of law; (2) declaring
24 that Defendants violated NEPA, NHPA, and the Trust Act, as well as these statutes’
25 implementing regulations, in issuing the Update and adopting its Record of Decision (“ROD”);
26 and (3) enjoining all demolition, construction, or other work in the Main Post authorized by the
27 ROD.
28

1 **JURISDICTION AND VENUE**

2 6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal
3 question), 2201 (declaratory judgment) and 2202 (injunctive relief). The federal government has
4 waived sovereign immunity in this action pursuant to 5 U.S.C. § 701, *et seq.*

5 7. Venue is proper in this Court pursuant to section 104(h) of the Trust Act and
6 pursuant to 28 U.S.C. § 1391(e) because the events or omissions giving rise to the claims herein
7 occurred within this judicial district, and the affected public lands and resources are located in
8 this judicial district.

9 8. This case is properly assigned to the San Francisco Division because it arises in
10 San Francisco County.

11 **PARTIES**

12 9. Plaintiff PRESIDIO HISTORICAL ASSOCIATION (“Association”) is a nonprofit
13 organization dedicated to maintaining the Presidio and educating the public about its history. The
14 Association is a public membership organization, organized under section 501(c)(3) of the Internal
15 Revenue Code, that has supported historic preservation and education at the Presidio for more than
16 fifty years. Its mission is “promoting understanding and preservation of the Presidio of San
17 Francisco’s history, as reflected in the Presidio’s structures, sites, stories and people.” The
18 Association has approximately 250 dues-paying members. Its achievements include restoring and
19 opening Fort Point – a massive pre-Civil War fort built to defend San Francisco Bay – to the
20 public. Subsequently, the Association supported Congressional designation of Fort Point as a
21 National Historic Monument. The Association also organized and temporarily managed the
22 Presidio Army Museum, a significant undertaking for educating the public. The Association
23 actively participated in the Trust’s NEPA and NHPA processes for the Main Post Update,
24 submitting comments at all appropriate stages. Many of the Association’s members actively use
25 the Presidio for recreational, cultural, educational, and aesthetic purposes such as sightseeing,
26 visiting historic buildings, and relating the history of the buildings to others. Their historic,
27 aesthetic, recreational, and cultural interests in the Presidio are being harmed by the Trust’s failure
28 to comply with the Trust Act, NEPA, and NHPA in adopting the Main Post Update.

1 10. Plaintiff SIERRA CLUB (“Club”) is a national nonprofit organization of
2 approximately 760,000 members, more than 148,000 of whom live in California. The Club is
3 dedicated to exploring, enjoying, and protecting the wilderness, rural, and urban environments of
4 the earth, to practicing and promoting use of the earth’s ecosystems and park resources, to
5 educating and encouraging humanity to protect and restore the quality of the natural, human, and
6 cultural environment, including its historic sites and structures, and to using all lawful means to
7 carry out these objectives. The Sierra Club’s concerns encompass the creation and protection of
8 national parks, recreation areas, and national historic landmarks, wherever they may be,
9 including those in urban areas. Many of the Club’s members use the trails, beaches, and Main
10 Post of the Presidio for active recreation, education, and contemplation. The Club’s particular
11 interest in this case stems from its involvement in creating the Golden Gate National Recreation
12 Area, its participation in GGNRA planning efforts since 1972, its role as a plaintiff in a prior,
13 related lawsuit, *Sierra Club v. John O. Marsh*, and its involvement in many Presidio planning
14 and decision processes governed by the Presidio Trust Act, NEPA, and NHPA, including the
15 Main Post Update planning process. The recreational, cultural, educational, and aesthetic
16 interests of the Sierra Club and its members are being harmed by the Trust’s failure to comply
17 with the Trust Act, NEPA, and NHPA in adopting the Main Post Update.

18 11. Defendant PRESIDIO TRUST (“Trust”) is a “wholly owned government
19 corporation” established by the Trust Act to manage the Presidio’s significant natural, historic,
20 scenic, cultural, and recreational resources “in a manner which is consistent with sound
21 principles of land use planning and management, and which protects the Presidio from
22 development and uses which would destroy the scenic beauty and historic and natural character
23 of the area and cultural and recreational resources.” In carrying out these management
24 responsibilities, the Trust must exercise its authority in accordance with the purposes set forth in
25 section 1 of the Act entitled “An Act to Establish the Golden Gate National Recreation Area in
26 the State of California, and for other purposes,” approved October 27, 1972, and “shall be treated
27 as a successor in interest to the National Park Service with respect to compliance with the
28 National Environmental Policy Act and other environmental compliance statutes.” The Trust,

1 which may be sued to the same extent as the federal government, approved the Main Post Update
2 and ROD at issue in this case.

3 **LEGAL BACKGROUND**

4 **The Presidio Trust Act**

5 12. In enacting the Presidio Trust Act in 1996, Congress found that the Presidio,
6 designated as a National Historic Landmark in 1962, is “one of America’s great natural historic
7 sites” and contains “significant natural, historic, scenic, cultural, and recreational resources.”
8 Congress further found that “preservation of the cultural and historical integrity of the Presidio
9 for public use recognizes its significant role in the history of the United States.”

10 13. The Trust Act mandates that the Trust manage the Presidio in a manner that
11 “protects the Presidio from development and uses which would destroy the scenic beauty and
12 historic and natural character of the area and cultural and recreational resources.” Presidio Trust
13 Act § 101. Specifically, the Trust must manage the Presidio in accordance with section 1 of the
14 Golden Gate National Recreation Area Act, which established the GGNRA “to preserve for
15 public use and enjoyment certain areas of Marin and San Francisco Counties, California,
16 possessing outstanding natural historic, scenic, and recreational values.” This section requires
17 that the Secretary of the Interior manage resources to provide for recreational and educational
18 opportunities, preserve and protect the area from development and uses that would destroy its
19 scenic beauty and natural character, and limit any new construction to replacement of existing
20 structures. 16 U.S.C. § 460-bb.

21 14. To carry out this mandate, the Trust must develop a comprehensive management
22 program for the Presidio that includes examining a full range of reasonable management options.
23 Presidio Trust Act § 104(c)(3). Implementing regulations require that the Trust “[m]inimize any
24 possible adverse effects of Trust decisions and actions upon the quality of the human
25 environment.” 36 C.F.R. § 1010.1(f).

26 15. In addition, the Trust Act and the GGNRA Act limit new construction to
27 replacement of existing structures of similar size in existing areas of development, known
28 colloquially as the “one down/one up” requirement. Presidio Trust Act § 104(c)(3); 16 U.S.C.

1 § 460bb-2(i).

2 **The National Historic Preservation Act**

3 16. Congress enacted the National Historic Preservation Act in 1966 to preserve “the
4 historical and cultural foundations of the Nation” and to address “inadequate” governmental
5 historic preservation programs that fail to “insure future generations a genuine opportunity to
6 appreciate and enjoy the rich heritage of our Nation” “in the face of ever-increasing extensions
7 of urban centers, highways, and residential, commercial, and industrial developments.” 16
8 U.S.C. § 470(b). Given these concerns, Congress expressly found it “necessary and appropriate
9 for the Federal Government to accelerate its historic preservation programs and activities.”

10 17. In adopting NHPA, Congress declared that it “shall be the policy of the Federal
11 Government” to (1) “provide leadership in the preservation of the prehistoric and historic
12 resources of the United States . . . and in the administration of the national preservation
13 program,” (2) “administer federally owned, administered, or controlled prehistoric and historic
14 resources in a spirit of stewardship for the inspiration,” and (3) “encourage the public and private
15 preservation and utilization of all usable elements of the Nation’s historic built environment.” 16
16 U.S.C. § 470-1.

17 18. The NHPA directed the Secretary of the Interior to establish the National Register
18 of Historic Places, which is “composed of districts, sites, buildings, structures, and objects
19 significant in American history, architecture, archaeology, engineering and culture.” 16 U.S.C.
20 § 470a.

21 19. Under the NHPA, National Historic Landmarks constitute a special category of
22 historic sites or districts eligible for listing on the National Register. Pursuant to the Department
23 of the Interior’s implementing regulations, properties may be designated as National Historic
24 Landmarks “only if they are nationally significant.” 36 C.F.R. § 65.4. To be nationally
25 significant, the district or site must, as a threshold matter, “possess exceptional value or quality
26 in illustrating or interpreting the heritage of the United States in history, architecture, archeology,
27 engineering and culture and . . . a high degree of integrity of location, design, setting, materials,
28 workmanship, feeling and association.” *Id.* In addition, National Historic Landmark status is

1 limited to those nationally significant districts or sites that:

2 (1) are associated with events that have made a significant contribution to, and are
3 identified with, or that outstandingly represent, the broad national patterns of United
4 States history and from which an understanding and appreciation of those patterns may
be gained; or

5 (2) are associated importantly with the lives of persons nationally significant in the
6 history of the United States; or

7 (3) represent some great idea or ideal of the American people; or

8 (4) embody the distinguishing characteristics of an architectural type specimen
9 exceptionally valuable for a study of a period, style or method of construction, or that
10 represent a significant, distinctive and exceptional entity whose components may lack
individual distinction; or

11 (5) are composed of integral parts of the environment not sufficiently significant by
12 reason of historical association or artistic merit to warrant individual recognition but
13 collectively compose an entity of exceptional historical or artistic significance, or
outstandingly commemorate or illustrate a way of life or culture; or

14 (6) have yielded or may be likely to yield information of major scientific importance by
15 revealing new cultures, or by shedding light upon periods of occupation over large areas
16 of the United States. Such sites are those which have yielded, or which may reasonably
be expected to yield, data affecting theories, concepts and ideas to a major degree.

17 *Id.*

18 20. The Presidio was designated as a National Historic Landmark in 1962 and is
19 listed on the National Register of Historic Places.

20 21. Pursuant to section 106 of NHPA, any federal agency proposing or funding an
21 undertaking must take into account the effect of the undertaking on any district, site, building,
22 structure, or object that is listed or eligible for listing on the National Register. 16 U.S.C.

23 § 470f. The Advisory Council on Historic Preservation has issued regulations articulating the
24 section 106 consultation procedures necessary to satisfy this statutory requirement. 36 C.F.R.
25 § 800 *et seq.*

26 22. An “undertaking” subject to the section 106 consultation requirements includes “a
27 project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of
28 a Federal agency, including those carried out by or on behalf of a Federal agency.” 36 C.F.R.

1 § 800.16(y).

2 23. Section 110 of NHPA imposes additional obligations on federal agencies that
3 manage historic properties. Section 110 provides that each federal agency (1) “shall assume
4 responsibility for the preservation of historic properties which are owned or controlled by such
5 agency”; (2) “shall undertake, consistent with the preservation of such properties and the mission
6 of the agency and the professional standards established pursuant to section 470a(g) of this title,
7 any preservation, as may be necessary to carry out this section”; and (3) “shall carry out agency
8 programs and projects . . . in accordance with the purposes of [NHPA], and give consideration to
9 programs and projects which will further the purposes of [NHPA].” 16 U.S.C. § 470h-2(a), (d).

10 24. The National Park Service has issued standards and guidelines for implementing
11 NHPA, including standards and guidelines for implementation of section 110. Among other
12 things, these standards and guidelines provide that (1) federal historic properties are to be
13 managed and maintained in a way that considers the preservation of their historic, archeological,
14 architectural, and cultural values; (2) the preservation and use of historic properties and their
15 careful consideration in agency planning and decisionmaking are in the public interest, are
16 consistent with the declaration of policy set forth in NHPA, and must be a fundamental part of
17 the mission of any Federal agency; and (3) agencies have an affirmative responsibility to manage
18 and maintain properties under their jurisdiction in a manner that takes into account the property’s
19 historic significance, above and beyond the section 106 consultation requirements.

20 25. In addition, section 110 of NHPA affords heightened protection for National
21 Historical Landmarks. In particular, the statute provides that “[p]rior to the approval of any
22 Federal undertaking which may directly and adversely affect any National Historic Landmark,
23 the head of the responsible Federal agency shall, to the maximum extent possible, undertake such
24 planning and actions as may be necessary to minimize harm to such landmark.” 16 U.S.C.
25 § 470h-2(f). *See also* 36 C.F.R. § 65.2. This provision imposes a substantive obligation on the
26 Presidio Trust to minimize harm to and destruction of the historic buildings and features of the
27 Presidio.
28

1 26. Where an agency’s undertaking directly and adversely affects a National Historic
2 Monument, the National Park Service standards and guidelines provide that the agency should
3 consider all prudent and feasible alternatives to avoid an adverse effect on the Landmark.

4 27. The planning and proposed activities under the Update to the Management Plan
5 and accompanying ROD are undertakings as defined by NHPA.

6 28. Because the Presidio is listed as a National Historic Landmark District, it is
7 subject to the full protections of NHPA, including both the section 106 consultation requirements
8 and the section 110 historic preservation requirements.

9 **The National Environmental Policy Act**

10 29. As a federal entity and pursuant to the Presidio Trust Act, the Trust is subject to
11 and must comply with the National Environmental Policy Act when exercising its discretionary
12 authority.

13 30. Congress enacted NEPA to “promote efforts which will prevent or eliminate
14 damage to the environment.” 42 U.S.C. § 4321. It is “our basic national charter for protection of
15 the environment.” 40 C.F.R. § 1500.1.

16 31. NEPA requires that federal agencies prepare an Environmental Impact Statement
17 (“EIS”) for any “major Federal actions significantly affecting the quality of the human
18 environment.” 42 U.S.C. § 4332(2)(C). Actions subject to NEPA include “[a]doption of formal
19 plans, such as official documents prepared or approved by federal agencies which will guide or
20 prescribe alternative uses of Federal resources, upon which future agency action will be based.”
21 40 C.F.R. § 1508.18. The Update is a major federal action subject to NEPA.

22 32. The primary purpose of an EIS is “to serve as an action-forcing device to insure
23 that the policies and goals defined in [NEPA] are infused into the ongoing programs and actions
24 of the Federal Government.” 40 C.F.R. § 1502.1. An EIS is “more than a disclosure document”;
25 it “shall be used by Federal officials in conjunction with other relevant material to plan actions
26 and make decisions.” *Id.*

27 33. To achieve these objectives, an EIS must, among other things, provide a full, fair,
28 and detailed statement of (1) the purpose and need for the proposed action, (2) the direct,

1 indirect, and cumulative environmental effects of the action and all connected actions, and (3) all
2 reasonable alternatives to, and mitigation measures for, the proposed action that may eliminate or
3 reduce its adverse environmental effects. 40 C.F.R. § 1502.

4 34. An EIS must take a “hard look” at impacts and alternatives in order to allow
5 meaningful consideration by both agency decisionmakers and the public. In addition, an EIS
6 “shall be prepared early enough so that it can serve practically as an important contribution to the
7 decisionmaking process and will not be used to rationalize or justify decisions already made.”
8 40 C.F.R. § 1502.5.

9 35. The NEPA implementing regulations require that an EIS “specify the underlying
10 purpose and need to which the agency is responding in proposing the alternatives including the
11 proposed action.” 40 C.F.R. § 1502.13. This statement of purpose and need provides the
12 foundation on which the impacts and alternative analyses are based. Accordingly, an inadequate
13 statement of purpose and need for the proposed agency action can render the entire EIS and
14 record of decision invalid.

15 36. NEPA requires federal agencies to “study, develop, and describe appropriate
16 alternatives to recommended courses of action in any proposal which involves unresolved
17 conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). The
18 analysis of alternatives is the “heart” of the environmental review process; the EIS must
19 “rigorously explore and objectively evaluate all reasonable alternatives” and must “include
20 appropriate mitigation measures not already included in the proposed action or alternatives,” in
21 order to “provid[e] a clear basis for choice among options by the decisionmaker and the public.”
22 40 C.F.R. § 1502.14. The alternatives analysis “should present the environmental impacts of the
23 proposal and the alternatives in comparative form, thus sharply defining the issues and providing
24 a clear basis for choice among options by the decisionmaker and the public.” *Id.* The exclusion
25 of reasonable alternatives from review renders an EIS inadequate.

26 37. In evaluating environmental effects, an EIS must, among other things, discuss
27 “[u]rban quality, historic and cultural resources, and the design of the built environment,
28 including the reuse and conservation potential of various alternatives and mitigation measures.”

1 40 C.F.R. § 1502.16.

2 38. NEPA also requires that the EIS consider and evaluate mitigation measures to
3 minimize the environmental impacts of the proposed action. 40 C.F.R. §§ 1502.14, 1502.16.

4 **FACTUAL BACKGROUND**

5 **History of the Presidio of San Francisco**

6 39. The Presidio is one of the most significant historic sites in San Francisco, the
7 Western United States, and the Pacific Rim nations. Indigenous Native Americans used the land
8 for thousands of years before the arrival of Europeans. In 1776, Spain established the Presidio as
9 a military post. It would become the most significant and longest continually operating military
10 post in North America. Mexican governments controlled the post from 1822 until 1846, when
11 the United States Army took possession and used it for military missions. That military use
12 continued until 1994.

13 40. The geographic heart and the most historic part of the Presidio is the central area
14 known as the “Main Post.” The Main Post includes many layers of history within its confines,
15 including significant sites, artifacts, and partial structures from the Spanish and Mexican eras, as
16 well as structures built in World War II and others used during the Vietnam War.

17 41. Seeking to secure control over the northern part of its territory called Nueva
18 Espana, Spain selected the Main Post as its northernmost military post in 1776. The site was
19 selected to defend the Bay and its surrounding lands from claims by other nations. It provided a
20 site for military defense with a view of the Bay, shelter from the wind, abundant firewood, and
21 access to a freshwater lake and spring. The outpost included a chapel, barracks, guardroom, jail
22 cells, a warehouse, and an earthen fortification with openings for guns. Today, the
23 archaeological remains of the original Spanish Presidio largely lie underground, except for
24 Spanish-era adobe walls located within the existing Officers’ Club.

25 42. During the late 1700s and early 1800s, the Presidio grew as the local Yerba Buena
26 colony (what is now San Francisco) expanded. In 1821, when Mexico declared independence,
27 the Presidio transferred ownership. In 1846, the United States took possession of California and
28 with it, the Presidio. Yerba Buena was officially renamed San Francisco. California elected its

1 first governor in 1849 and that same year, the United States Army established a permanent
2 presence in the Presidio. When gold was discovered in the Sierra Nevada foothills, San
3 Francisco's population grew rapidly to 30,000.

4 43. When the Civil War broke out in 1861, San Francisco had 60,000 residents. The
5 Army guarded San Francisco Bay to prevent entry or invasion by Confederate forces seeking
6 California's gold.

7 44. Between 1878 and 1887, the Army brought the "Military Division of the Pacific"
8 to the Presidio, locating its main building on the west side of the Main Post.

9 45. When the Spanish-American War broke out in 1898, the Presidio became
10 internationally important, as thousands of soldiers gathered there before they left for the
11 Philippines. A large number of brick barracks were built to house the soldiers, some of which
12 still stand as the Presidio's iconic "Montgomery St. Barracks." Pershing Hall was built to
13 provide Officers Quarters.

14 46. The Presidio expanded greatly again during World War I, spurred in part by its
15 designation as one of the first sites for training the newly established Reserve Officers' Training
16 Corps. New housing was built shortly after the War, including the first non-commissioned
17 officers building and a three-story barracks. Additionally, the first firehouse on any American
18 military base was built in the Presidio, following a tragic fire that killed General Pershing's
19 family. Many of the buildings from this era still exist.

20 47. During the 1930s, the Presidio became the site of much new construction as the
21 Works Progress Administration responded to the Great Depression. New barracks, the Presidio
22 Theatre, a School for Bakers, new warehouses, and a renovation of the Officer's Club all date
23 from this period.

24 48. World War II heralded another significant construction boom at the Presidio, as
25 many soldiers participating in the Pacific Theatre streamed through the post. The Presidio was
26 the site of the Western Defense Command, as well as a language school for Japanese-American
27 soldiers. Four buildings constructed during the war remain on the Main Post, including two
28 barracks and a Red Cross recreation center.

1 49. The Main Post is still a historic resource for San Francisco’s residents and visitors
2 from around the world. With appropriate materials and management, it could provide them with
3 the unique opportunity to experience and learn about the Spanish and Mexican eras and the
4 history of the US, as shaped by the Presidio and the people who were once part of the Presidio.

5 **Transition to Part of the Golden Gate National Recreation Area**

6 50. In 1972, Congress enacted the Golden Gate National Recreation Area Act,
7 creating the Golden Gate National Recreation Area. The GGNRA included the Presidio, which
8 was to be transferred to the Interior Department’s National Park Service if and when it was no
9 longer needed for military purposes. 16 U.S.C. § 460bb. In 1996, Congress modified the
10 GGNRA Act by adopting the Presidio Trust Act, establishing the Presidio Trust to manage the
11 part of the Presidio within the GGNRA. P.L. 104-333, Div I, Title I, 110 Stat. 4097.

12 51. The Trust held its first meeting on July 9, 1997. At this time, the Trust began
13 leasing many of the buildings in the Presidio pursuant to the Trust Act. Simultaneously, the
14 Trust worked to design and implement the Presidio Trust Management Plan, which was intended
15 to provide a general and comprehensive land use management plan for the Presidio. Part of the
16 Management Plan, released in 2002, covered the historic Main Post area of the Presidio.

17 **Main Post Update and NEPA Process**

18 52. In 2004, the Trust held public meetings on a plan to plant grass in the Main
19 Parade Ground. Those draft plans originally included a 100,000-square-foot museum for
20 contemporary art and a hotel. The Management Plan did not at that time allow for such new
21 construction, and the Trust did not prepare an EIS or undertake NHPA consultation for the
22 proposed actions.

23 53. In August 2007, the Trust issued a “Request for Proposals for Cultural
24 Institutions” in the Main Post. The Trust issued this Request for Proposals before any notice that
25 the Trust intended to alter the stated goals and plans for the Main Post to allow construction of a
26 substantial new building in the center of the Main Post. The Request for Proposals noted that the
27 Trust had received an offer to lease an area south of the Main Parade Ground in the Main Post
28 for constructing a new 100,000-square-foot museum.

1 54. In response to this Request for Proposals, the Presidio Historical Association
2 submitted a proposal for a History Center that would emphasize the historic significance of the
3 Presidio. The Association argued that a History Center is more appropriate for the Main Post
4 than a modern art museum and would better comply with the Trust’s duties under the Presidio
5 Trust Act. The Trust promptly rejected the Association’s proposal and refunded the required
6 earnest money deposit.

7 55. The Trust subsequently announced that it would initiate an environmental and
8 historical review to update the Management Plan to accommodate proposed new planning and
9 development of a museum and lodge in the Main Post. Scoping for the Update began on October
10 23, 2007. On November 28, 2007, the first public meeting on the Update was held. A mere 17
11 days later, the Trust concluded scoping and began work on drafting a NEPA document – a Draft
12 Supplemental EIS (“DSEIS”) that would assess the impacts of the Update but would not examine
13 alternative locations outside the Main Post.

14 56. The DSEIS was made available for public comment on June 13, 2008. The
15 DSEIS’s statement of purpose and need for the proposed action noted that “[t]he Presidio is part
16 of the nation’s largest and most visited urban national park and the largest active historic
17 preservation project in the country.” It further stated that “[t]he Trust believes that a major
18 cultural institution in the main Post would serve as a catalyst for attracting other compatible uses
19 to the Main Post’s remaining historic buildings, bring people to the Main Post, and contribute to
20 making the Presidio a great national park.” To fulfill this need, the DSEIS stated that the
21 objective of the proposed action was to “take into account several proposals that were not fully
22 contemplated in the [Management Plan] and its Final Environmental Impact Statement.”
23 Plaintiffs filed detailed and thorough comments on the DSEIS, as did hundreds of other
24 organizations and members of the public.

25 57. After two public Board meetings, at which almost all commenting organizations
26 and members of the public expressed deep concern about the proposed plans, the Trust issued a
27 Supplemental Draft SEIS (“SDSEIS”) in February 2009. The statement of “purpose and need”
28 in the SDSEIS differed from the statement in the June 2008 document – it now claimed that the

1 Update was necessary to “take into account several proposals, including the art museum, the
2 lodge . . . , that were not fully contemplated in the [“Plan”].” One of the planning objectives
3 listed in the SDSEIS was to “[s]elect lodging locations.”

4 58. Like the DSEIS, the SDSEIS also received many negative comments from
5 Plaintiffs and other members of the public. Collectively, the DSEIS and SDSEIS received
6 comments from six agencies, two elected officials, 51 organizations, and 2,845 individuals in
7 writing, as well as verbal comments at three public Board meetings and two other public
8 meetings. Many comments questioned the validity of any construction on the Main Post,
9 particularly the addition of a large hotel called the “Presidio Lodge.” Additional comments
10 raised concerns about NHPA violations, in particular violations of section 110, explaining that
11 the Trust had not satisfied or addressed the requirement that the Trust take all steps possible to
12 “minimize harm” to the National Historic Landmark District.

13 59. Further comments raised the issue of the preferred alternative’s construction of a
14 95,000-square-foot hotel in the heart of the Main Post, 70,000 square feet of which would be
15 new construction. Because the Trust failed to identify an existing structure of similar size that
16 the construction would replace, comments explained that the proposed construction would
17 violate Presidio Trust Act section 104(c)(3), the “one down, one up” requirement.

18 60. In November 2010, the Trust issued its Final Main Post SEIS (“FSEIS”), which
19 included a “purpose and need statement” that differed from either the DSEIS or the SDEIS. The
20 FSEIS dropped the art museum from consideration, noting that its proponent had withdrawn the
21 proposal. The “purpose and need” articulated in the FSEIS was now to make the Main Post both
22 the “focal point for visitor orientation” (a purpose authorized under the Plan) as well as a
23 “Community Center.” The FSEIS, however, did not include sites or locations for a visitor
24 orientation center or a history museum; instead, it included a very large, multi-building hotel to
25 be almost entirely new construction, located in the center of the historic Main Post. The FSEIS
26 listed actions the Trust intended to pursue in order to meet the purpose and need. Among those
27 actions was to “[e]nsure that new construction for the Presidio Lodge . . . is sited to be
28 compatible with the historic district” and to bring “lodging and restaurants to make the Main

1 Post the heart of the Park.” The Trust did not explain how construction of a new hotel, the
2 initially proposed action that the DSEIS was supposed to evaluate, instead became a key
3 objective of the proposal identified in the purpose and need section of the FSEIS.

4 61. The FSEIS proposed and considered four alternatives. Alternative One, which the
5 Trust claims is the “required NEPA ‘no action’ alternative,” would utilize many of the current
6 structures on the site, although it would require rehabilitating Building 42 (Pershing Hall) to
7 provide lodging and a 4,000-square-foot addition to the Presidio Chapel.

8 62. Alternative Two is the “mitigated preferred alternative.” This alternative includes
9 demolition of 94,000 square feet of buildings, including buildings that contribute to the National
10 Historic Landmark District, and an additional 146,500 square feet of construction. Under this
11 alternative, the hotel would occupy 95,000 square feet, 70,000 square feet of which would be
12 new construction, in an area near the center of the Main Post.

13 63. Alternative Three purports to be based on a proposal submitted by Plaintiff
14 Presidio Historical Association in 2007 in response to the Trust’s “Request for Proposals for
15 Cultural Institutions” in the Main Post. Despite its rejection of Plaintiff’s proposal years earlier,
16 the Trust resurrected the rejected proposal as one of the alternatives evaluated in its FSEIS. As
17 described by the Trust in the FSEIS, Alternative Three called for removal of several historic
18 buildings and new construction in aesthetically sensitive areas.

19 64. Alternative Four is what the Trust deemed the “status quo” alternative. It limits
20 construction actions to those that were already being undertaken “as part of other ongoing [Trust]
21 plans, programs, or projects.”

22 65. Unsurprisingly, the Trust indicated in the FSEIS that Alternative Two was its
23 preferred Alternative, but that it would reserve its final decision until it issued the ROD.

24 66. Along with release of the FSEIS, the Trust issued its “Response to Comments” on
25 the SDSEIS.

26 67. On February 23, 2011, the Trust issued the ROD finalizing the Trust’s decision to
27 select Alternative Two. The ROD asserted that Alternative One was rejected, in part, because of
28 “limited lodging opportunities.” ROD 13. The Trust rejected Alternative Three because “the

1 Trust believes that the alternative’s programmatic vision, i.e., the traditional concept of a history
2 museum as the alternative’s cornerstone, is neither the only nor necessarily the most compelling
3 approach to interpreting the history at the Presidio.” *Id.* Alternative Four, the so-called “status
4 quo” alternative, was deemed to merely “mothball” buildings and was rejected because it
5 purportedly would “not ensure the proper preservation, rehabilitation, and use of the historic
6 buildings and landscapes that define the Main Post’s character.” *Id.*

7 **CLAIMS FOR RELIEF**
8 **First Cause of Action**
9 **(Violation of Presidio Trust Act)**

10 68. Plaintiffs reallege and incorporate by reference each and every allegation set forth
11 in paragraphs 1 through 67 of this Complaint as though fully set forth herein.

12 69. In adopting the Main Post Update to the Presidio Trust Management Plan and the
13 Record of Decision therefor, Defendant violated the Presidio Trust Act, 16 U.S.C. § 460bb app.,
14 by (i) failing to protect and preserve the historical integrity of the Presidio from development and
15 uses which would destroy the area’s scenic beauty, historic and natural character, and cultural
16 resources; (ii) failing to minimize the adverse effects of new development upon the historical and
17 cultural quality of the Presidio environment; and (iii) failing to limit new construction to
18 replacement of existing structures of similar size as required by Presidio Trust Act section
19 104(c)(3).

20 70. Defendant’s violation of the Presidio Trust Act is arbitrary, capricious, an abuse
21 of discretion, or otherwise not in accordance with law within the meaning of the Administrative
22 Procedure Act, 5 U.S.C. § 706(2), and is subject to judicial review thereunder.

23 **Second Cause of Action**
24 **(Violation of NHPA)**

25 71. Plaintiffs reallege and incorporate by reference each and every allegation set forth
26 in paragraphs 1 through 67 of this Complaint as though fully set forth herein.

27 72. In adopting the Main Post Update to the Presidio Trust Management Plan and the
28 Record of Decision therefor, Defendant violated the National Historic Preservation Act, 16
U.S.C. §§ 470 *et seq.*, and its implementing regulations, standards, and guidelines by (i) failing

1 to plan, manage, and maintain programs and projects for the historic Main Post of the Presidio
2 Trust in a manner that preserves the area's historic, archeological, architectural, and cultural
3 values consistent with the Presidio Trust Act; (ii) failing to ensure that the preservation and use
4 of the historic Main Post is in the public interest and consistent with the policy declarations of
5 NHPA; (iii) failing to satisfy Defendant's affirmative duty to manage and maintain the National
6 Historic Landmark District that contains the Main Post in a manner that properly accounts for the
7 property's historic significance; (iv) failing to consider and evaluate all prudent and feasible
8 alternatives to avoid an adverse effect on the Main Post and Presidio National Landmark District;
9 and (v) failing to undertake planning and actions necessary to minimize, to the maximum extent
10 possible, direct and adverse harm to the historic features of the Main Post.

11 73. Defendant's violation of the National Historic Preservation Act is arbitrary,
12 capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of
13 the Administrative Procedure Act, 5 U.S.C. § 706(2), and is subject to judicial review
14 thereunder.

15 **Third Cause of Action**
16 **(Violation of NEPA)**

17 74. Plaintiffs reallege and incorporate by reference each and every allegation set forth
18 in paragraphs 1 through 67 of this Complaint as though fully set forth herein.

19 75. In adopting the Main Post Update to the Presidio Trust Management Plan and the
20 Record of Decision therefor, Defendant violated the National Environmental Policy Act, 42
21 U.S.C. § 4321 *et seq.*, and its implementing regulations by (i) failing to provide a proper
22 statement of purpose and need in the EIS consistent with the statutory mandates of the Presidio
23 Trust Act and NHPA; (ii) failing to consider an adequate range of alternatives to the proposed
24 Update; and (iii) failing to consider mitigation measures that would avoid destruction of the
25 historic, architectural, and cultural values that led to the National Historic Landmark designation
26 and which must be protected under the Presidio Trust Act.

27 76. Defendant's violation of the National Environmental Policy Act is arbitrary,
28 capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of

1 the Administrative Procedure Act, 5 U.S.C. § 706(2), and is subject to judicial review
2 thereunder.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

- 5 1. Order, adjudge, and declare that the Main Post Update and ROD violate the
6 Presidio Trust Act, the National Historic Preservation Act, the National Environmental Policy
7 Act, and/or the Administrative Procedure Act;
- 8 2. Set aside the Main Post Update and ROD and remand the matter to the Presidio
9 Trust for further consideration consistent with the Court’s judgment;
- 10 3. Enter such temporary, preliminary, or permanent injunctive relief as Plaintiffs
11 may hereafter specifically seek;
- 12 4. Award Plaintiffs their reasonable costs, litigation expenses, and attorney’s fees
13 associated with this litigation and the related administrative proceedings pursuant to the Equal
14 Access to Justice Act, 28 U.S.C. §§ 2412 *et seq.*, and/or all other applicable authorities; and
- 15 5. Grant such further relief as the Court deems necessary or appropriate to protect
16 the public lands and resources of the San Francisco Presidio from further degradation.

17 Dated this ___ day of _____, 2012

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

19 By: _____
20 Deborah A. Sivas

21 Counsel for Plaintiffs PRESIDIO HISTORICAL
22 ASSOCIATION and SIERRA CLUB