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# Presidio and Valles Caldera: A Preliminary Assessment of Their Meaning for Public Resource Management\*\*

## ABSTRACT

*Enacted four years apart, the authorizing legislation for the Presidio and Valles Caldera Trusts emphasizes revenue generation, self-sufficiency, and minimizing taxpayer costs. Factors other than improved incentives better explain their development. First, both are experiments in community management of public land, though more "top down" than grassroots. Second, the cultures of agencies and environmental interests play a role in adapting to this new preserve concept. Discussed are what trusts and government corporations bring to public land management, the institutional fit in the National Park Service and the U.S. Forest Service, the likelihood of self-sufficiency, the eco-geographical fit of these models, and management innovations.*

## INTRODUCTION

Early advocates of both national forests and parks reassured a reluctant Congress that the reservations set aside for public use would be self-supporting and would not cost the government any money or require any appropriations.<sup>1</sup> However, commitment to that objective waned. In this article we look at two recent efforts to resurrect the idea of self-sufficiency in federal land designations, one associated with the

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1. BARRY MACKINTOSH, VISITOR FEES IN THE NATIONAL PARK SYSTEM: LEGISLATIVE AND ADMINISTRATIVE HISTORY 1 (1983), available at [http://www.cr.nps.gov/history/online\\_books/mackintosh3/index.htm](http://www.cr.nps.gov/history/online_books/mackintosh3/index.htm) (last visited Aug. 2, 2004). See also JOHN ISE, OUR NATIONAL PARK POLICY: A CRITICAL HISTORY 20-29 (1961).

National Park Service (NPS), at the Presidio of San Francisco, and the other with the U.S. Forest Service (USFS), at Valles Caldera outside Los Alamos, New Mexico.

At each site, a "trust" is charged with drafting an economically self-sufficient management plan to manage the public lands. We intended to compare the two, probing for signs that market-based manager incentives improve federal land management. That did not work out. Enacted four years apart, in vastly different ecological, political, and demographic settings, the authorizing legislation for the Presidio Trust (PT), created in 1996, and the Valles Caldera Trust (VCT), created in 2000, emphasizes revenue generation, self sufficiency, and minimizing costs to federal taxpayers, signaling a new paradigm for public land management. We found that one size—in this case the self-sufficient, wholly owned government corporation—does not fit equally well in both cases. And we found that factors other than improved incentives made more of an impact on these two sites.

Thus, our discussion has less to do with incentives than we anticipated. Two elements emerge as more important. First, both sites are better described as experiments in community management of public lands. These community management projects are more "top-down" grassroots projects generated by national legislation, rather than a devolution of authority to deeply involved local interests as in various watershed and NGO-based efforts around the country. Although responsive to local politics, these trusts, nevertheless, offer an opportunity for institutional and administrative structures to evolve to some degree in situ. They now respond to the constraints and unique dynamics of each geographical and ecological setting.

Second, the "cultures" of agencies and environmental interests play a significant role in the capacity to adapt smoothly to this new kind of "preserve." The Forest Service at Valles Caldera seems more receptive to the new model than the NPS at the Presidio, but the Forest Service also has more to gain.<sup>2</sup> A near unanimous objection to private profit making in public parks influences the response to the Presidio. This response has apparently been more of a factor in the Presidio case, though it is also a factor in ranch-based conservation like the Valles Caldera.

Discussion of those factors will proceed in three sections. The first two sections tell basic stories about the Presidio Trust and the Valles

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2. As shall be discussed below, if the Valles Caldera Trust does not become self-sufficient, the Forest Service is in line simply to add the area to the existing national forest. The Presidio has already been removed from pending NPS jurisdiction and, if the trust fails there, it will be sold rather than transferred to the NPS. See *infra* Part I.C.

Caldera Trust. In the third section we draw tentative conclusions about trusts, government corporations, what they bring to public land management, the institutional fit of these new units in the NPS and the USFS, the likelihood of self-sufficiency in both units, the ecological fit of these models to the setting of each, and what we are learning from the management innovations apparent therein.

## I. THE PRESIDIO TRUST

The newly Republican 104th Congress was emphatic about self-sufficient management when authorizing the Presidio Trust in 1996. The goal was to protect portions of what had become an unacceptably expensive national park, San Francisco's Golden Gate National Recreation Area (GGNRA), by establishing a government corporation. The arrangement is intensely controversial because it requires that the Trust become self-sufficient by 2013 and involves the Presidio Trust in commercial and residential development in one of the hottest, and most volatile, real estate markets in the nation.<sup>3</sup> Moreover, as an urban park at the scenic edge of San Francisco, where observers describe planning as a "blood sport," any proposed change is guaranteed to inspire opposition. Almost no one is willing to audibly admit being impressed with *anything* the PT has tried; yet the Board soldiers on with real dedication to its mission.

### A. Ancient and Recent History

Presidios were a major element of Spanish colonization of the new world; they accompanied the chain of missions established in South, Central, and North America. San Francisco's was the most northern, constructed to accompany Mission Dolores.<sup>4</sup> Founded in 1776, it remained an active military post until it was turned over to the Department of the Interior in 1996. Cultural resources at the Presidio include pre-settlement Indian sites and artifacts of the Spanish

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3. The Presidio Trust got into action just as the dot-com bust unhinged the San Francisco commercial real estate market. At present writing, office space in SOMA (the south of Market Street area with which the Presidio office space must compete) is at about 50 percent vacancy. The SOMA area requires less controversial, less expensive rehabilitation, and is accessible on public transport. San Francisco Cityscape, *South-of-Market: No Postcard Views – Just the Messy Reality of the City*, at <http://www.sfcityscape.com/photos/SOMA/index.html> (last visited Aug. 31, 2004).

4. Matt Brown, *The Newest National Park: The San Francisco Presidio, Before and After (1996)* (unpublished student term paper, University of California, Berkeley) (on file with author); see also CHARLES WOLLENBERG, *GOLDEN GATE METROPOLIS* (1985).

occupation, American settlement, the Civil War, the Spanish American War, and World Wars I and II.<sup>5</sup>

Located along the northwestern shoreline of San Francisco, the Presidio is one of numerous state and federal holdings included in the Golden Gate National Recreation Area during the height of President Nixon's "parks for the people" urban recreation initiative.<sup>6</sup> Extensive land acquisitions in rural Marin and San Mateo counties were also included. The original 1972 Act establishing GGNRA left most of the Presidio under the jurisdiction of the U.S. Army. The act restricted development within the Army's area and directed that, when the Army found the land to be surplus, it would be added to GGNRA.<sup>7</sup> Subsequent legislation further restricted the Army's authority to change the landscape of the park-in-waiting. In April 1989, Congress approved a list of base closures that included the Presidio. In 1990, the NPS began an addition to the GGNRA General Management Plan (GMP) for the new parklands. The NPS plan was released in 1994, but the "post-to-park" transfer took six years to complete and the Presidio remained under army control until 1995.

The NPS plan recognized that under any circumstances the Presidio would have been a peculiar "park." The Presidio is hardly the "vignette of early America" that defines the Park Service ideal.<sup>8</sup> The 1480 acres containing 149 buildings include everything from a Spanish American War hospital to an 18-hole golf course.<sup>9</sup> In addition, the area

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5. Most notably, in the present context, the Presidio was the base for much of the Army activity in clearing Indians out of the western territories, and for all of the Army's efforts to protect and steward the early national parks. The two are closely related. See generally MARK SPENCE, *DISPOSSESSING THE WILDERNESS: INDIAN REMOVAL AND THE MAKING OF THE NATIONAL PARKS* (1999).

6. Nixon signed the bill for the GGNRA on the same day, October 27, 1972, that he signed the legislation piecing together federal holdings to form the basic structure of Gateway National Recreation Area in New York City and environs. Am. Presidency Project, *Richard M. Nixon: 1969-1974*, 379 - *Statement About Decision to Sign 37 Bills*, at <http://www.presidency.ucsb.edu/site/docs/pppus.php?admin=037&year=1972&id=379> (last visited Aug. 31, 2004).

7. See legislation establishing the Golden Gate National Recreation Area: Pub. L. No. 93-544, 88 Stat. 1741 (1974); Pub. L. No. 95-625, 92 Stat. 3484 (1978); Pub. L. No. 96-199, 94 Stat. 68 (1980); and Pub. L. No. 96-344, 94 Stat. 1133 (1980). The parade of statutes establishing and expanding the GGNRA/Presidio is discussed in Natalie Alchadeff, *The Incremental Establishment of Golden Gate National Recreation Area: From Politics to Public Law* (1996) (unpublished senior thesis, College of Natural Resources, University of California, Berkeley) (on file with author).

8. See RICHARD SELLARS, *PRESERVING NATURE IN THE NATIONAL PARKS: A HISTORY* 214-26 (1997) (discussing the Leopold Report as the basic management guideline for the NPS).

9. The Presidio site includes the following: the Main Post, core of the original Spanish occupancy and containing 149 historic buildings; Fort Scott, a 1912 coastal artillery subpost

contains 50 miles of roads and parking for workers in all the hospitals and buildings, major city arterials, and the approach road and toll plaza for the Golden Gate Bridge. Unfortunately, in spite of all those facilities, the transportation system has not connected the Presidio to the rest of the city and getting there for a workday or a visit is a considerable challenge.<sup>10</sup>

Apart from buildings, roads, and structures, the unbuilt environment of the Presidio itself, spectacular as it is, is also largely anthropogenic. The large dramatic trees are most often Australian eucalyptus and non-native pines. The grasses and herbs are imports from Mediterranean Europe. Wetlands have been greatly altered, and a variety of non-native wildlife and aquatic species are common. Additionally, the site is isolated from other preserves and is sandwiched between the sea and urban San Francisco. As such, it can make no pretence of being intact or adequately large connected habitat for much of the native flora and fauna. Bordering a highly developed urban area, and hosting numerous human and animal visitors, non-native species continue to encroach. The scale and character of ecological processes at the Presidio are severely and permanently constrained. Fire, a much lauded "natural process" in local ecosystems, will NOT be reintroduced at the Presidio, at least not in a way that much resembles its pattern and function prior to the development of San Francisco. Grizzly bears and elk will not roam the hills and shore. The environmental potential of the site, in terms of restoring native species, and particularly the large-scale processes shaping their evolution on the site, is limited. On the other hand, its potential as open space, as a scenic area, and for nature-based

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containing 159 buildings; the Letterman complex, originally a Spanish American War hospital, expanded to include wards, clinics, offices, warehouses, and buildings from Colonial Revival to Mediterranean Revival, and the historic Lombard Gate entrance to the complex; a cavalry stable, including 16 buildings, built in 1914; a 37-acre Public Health Service hospital complex, including a hospital, support buildings, and residences, built in the 1930s; an East Housing area, which contains 135 buildings, some historic and some otherwise; Crissy Field, a recently restored stretch of bay wetlands used as a fill area and containing nearly 100 buildings of diverse duration and importance; Presidio Hill, consisting of 650 units of housing in three complexes, an 18-hole golf course, and significant open space; the "historic" Presidio Forest planted by the Army in the 1880s as a way to reclaim wasteland, and senescent over a century later; Lobos Creek, the historic water supply for the Fort containing a water treatment plant, an Army reserve center, and assorted other buildings; and a national cemetery established in 1884. GOLDEN GATE NATIONAL RECREATION AREA, CREATING A PARK FOR THE 21ST CENTURY: FROM MILITARY POST TO NATIONAL PARK, FINAL GENERAL MANAGEMENT PLAN AMENDMENT, PRESIDIO OF SAN FRANCISCO (1994) [hereinafter GMP].

10. The description of the different features of the Presidio is adapted from GMP, *id.*

recreation and education opportunity is almost limitless and highly valued by the local populace.

The NPS planning process was exemplary in its attention to public views and resulted in dozens of major disputes regarding low-cost housing and sell-outs to the electric utility PG&E. This has been chronicled<sup>11</sup> and will not be discussed in depth. Instead, the analysis focuses on the GGNRA plan for reuse of the buildings and the costs projected. The GMP for the renovation and reuse of the buildings—which number around 870, including 510 that are historic—had two key elements.

First, the NPS plan for the Presidio envisioned a “dynamic setting for a network of institutions devoted to stimulating understanding of and action on the world’s most critical social, cultural, and environmental challenges.”<sup>12</sup> That included programs to “promote and advance research, education, policy formulation, training, and demonstration activities on environmental issues of worldwide importance;...training youth to serve their country,...[promoting] the importance of public service, promot[ing] life and earth science research...devoted to issues of health, life, and earth sciences;...and conferences on local, national, and global issues.”<sup>13</sup> This priority is frequently discussed with reference to “do-gooder” tenants, who, in return for low rent, were expected to participate both in the restoration of the buildings and provide access and other services that would enhance the visitor’s experience.

Recognizing its limited expertise in leasing and management of commercial and residential rentals, the NPS plan recommended an “innovative organizational structure to support effective management of the Presidio.” New legislative authorities would create a “federally chartered partnership institution” responsible for “building repair and

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11. Kathleen Sullivan, *Nature Lovers Hate Crissy Field Hotel Idea*, *Presidio Trust's Plan Perplexes Purists*, SFGATE.COM, Apr. 13, 2002, available at <http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2002/04/13/MN40059.DTL> (last visited Aug. 2, 2004); Kathleen Sullivan, *Presidio Commissary, PX to Close, Retired Veterans Will Have to Travel to Moffett Field*, *Travis AFB*, SFGATE.COM, Mar. 15, 2002, available at <http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2002/03/15/MN66198.DTL> (last visited Aug. 2, 2004); David R. Baker, *Differing Agendas Vying for Presidio Trust Public Input on Conservation, Development*, SFGATE.COM, Dec. 25, 2000, available at <http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/12/25/MN74816.DTL> (last visited Aug. 2, 2004); *Lawmaker Spurns S.F. Proposal for Presidio Housing*, S.F. CHRON., Apr. 30, 1997, at A17, available at <http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1997/04/30/MN30379.DTL> (last visited Aug. 2, 2004).

12. GMP, *supra* note 10, at vi.

13. *Id.*

maintenance, leasing and property management, program development, and fundraising."<sup>14</sup>

The second important feature of the 1994 GMP was the associated costs. Cleaning up the site, rehabilitating the buildings, and repairing and upgrading the infrastructure was estimated to cost \$702 million to \$1.2 billion or more. The largest piece, between \$514 million and \$1 billion, was for building rehabilitation. The NPS and Army estimated that annual operation and maintenance costs at the Presidio were \$45.5 million through 1995 and between \$38 and \$40 million thereafter. Tenants would pay a portion of the refurbishing and operation and maintenance costs.<sup>15</sup> Nevertheless, the Presidio would be the most expensive park in the NPS system, with an annual cost to the government three times that of Yellowstone,<sup>16</sup> something opponents of the project were fond of noting.

The California congressional delegation, led by San Francisco Congresswoman Nancy Pelosi, nevertheless introduced legislation in 1994 to create the recommended public benefit corporation to help sustain the Presidio. Her bill provided that Presidio management would conform to the laws governing all national parks and the NPS 1994 Presidio plan. Further, the proposed bill contemplated tenants who would pay fair market value for the lease.<sup>17</sup> This was not an easy sell to either the park's mavens, who viewed the Presidio as a Yosemite-like wilderness, or the neighbors of the Presidio, who did not want anything done to increase visitation in their private preserve. Nor was it particularly attractive to real estate developers who were presumed to be willing to bankroll much of the restoration.

## B. Changed Conditions

The move toward Presidio legislation was interrupted in 1994 when the Republicans took control of Congress and institutionalized significantly different assumptions about public resources management. We would not be telling this story if no act had passed, but the Presidio

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14. *Id.* at x.

15. GEN. ACCT. OFF., TRANSFER OF THE PRESIDIO FROM THE ARMY TO THE NATIONAL PARK SERVICE 1 (1993) (statement of James Duffus, III, Director, Nat. Res. Mgmt. Issues, Res., Cmty, & Econ. Dev. Div.).

16. Donald J. Hellmann, *The Path of the Presidio Trust Legislation*, 28 GOLDEN GATE U. L. REV. 319, 330 (1998).

17. *Id.* at 332; See also Aaron Glantz, What's a Park? Who Should I Trust? The Politics of the Presidio (1998) (unpublished term paper, University of California, Berkeley) (on file with the author). Although the Hellmann article provides a better legislative history, we started with Glantz and are partial to his paper.



Trust Act of 1996 is far more demanding regarding cost recovery and self-sufficiency than the 1994 GGNRA plan or Pelosi's original legislation.

Moreover, assumptions about financing that underwrote the 1994 plan changed radically. The NPS presumed that both the Sixth Army and the University of California, San Francisco (the University of California Medical School) would be major tenants, and that rents and income would "offset a major portion of the park's annual operating budget."<sup>18</sup> The Army decided to leave the Presidio entirely. The decision was publicly cast in terms of a modestly amusing dispute over who would control the Presidio golf course. More relevantly, the Army did not want to be a tenant of the National Park Service. Finally, the Army had experience being left to pay the bills on Yellowstone and a number of other western parks<sup>19</sup> at the turn of the previous century and likely did not want to be hit up indefinitely for Presidio rehabilitation and operations.

Out went the Army, primary tenant for 277 buildings, approximately 30 per cent of the available square footage, including 1.8 million square feet, or half of the residential space in the Presidio. In addition, the NPS became irritated with the University of California, San Francisco, the anticipated tenant for the difficult-to-deal-with Letterman hospital complex, and withdrew from negotiations.<sup>20</sup> The NPS wound up with the golf course, but the two major cash cows needed to support the GMP vision of a global problem-solving center sought greener pastures.

### C. The Presidio Trust Established – 1996

The general contours of Pelosi's original proposal survived. Senator Murkowski, Republican Chair of the Senate Committee on Energy and Natural Resources, symbolized the key shift in emphasis, however, by changing the name of the bill from Pelosi's "A Bill to Provide for the Management of the Presidio Under the Jurisdiction of the

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18. GMP, *supra* note 10, at x.

19. Hellmann, *supra* note 17, at 328, 338. See also DUANE HAMPTON, HOW THE CAVALRY SAVED THE NATIONAL PARKS (1971); HARVEY MEYERSON, NATURE'S ARMY: WHEN SOLDIERS FOUGHT FOR YOSEMITE (2001).

20. The NPS became convinced that the University was "looking for a bargain deal and was unwilling to pay fair market value for a long-term lease." Hellmann, *supra* note 17, at 334. Since most of the other tenants of NPS leases were not paying market rates, it is not clear why the University should have. Nevertheless, it was an enormous black eye as well as a financial loss. Because the NPS had no authority at the Presidio after the Army left, Congress had been obliged to pass temporary legislation especially to provide for the University deal at the Letterman complex. Then the NPS backed out. Hellmann, *supra*, at 331-34.

Secretary of the Interior" to "A Bill to Provide for the Administration of Certain Presidio Properties at Minimal Cost to the Federal Taxpayer."<sup>21</sup>

The bill established a "wholly owned government corporation to be known as the Presidio Trust"<sup>22</sup> to manage most of the Presidio site. The Presidio area was divided into two unequal parts: Area A, a 328-acre coastal fringe to remain under NPS jurisdiction, and Area B, 1168 acres containing the majority of the buildings, which was to be removed from NPS jurisdiction and managed by the Presidio Trust.

The Trust was directed to develop a management program "designed to reduce expenditures by the National Park Service and increase revenues to the Federal Government *to the maximum extent possible*."<sup>23</sup> The new Republican Congress added several provisions to eliminate any wiggle room. First, the bill provided that the Trust had to be financially self-sufficient within 15 years of operation. If it failed, "then all property under the administrative jurisdiction of the Trust...*shall be transferred to the Administrator of the General Services Administration to be disposed of...and any real property so transferred shall be deleted from the boundary of the Golden Gate National Recreation Area*."<sup>24</sup> The self-sufficiency priority also defines the expertise required on the Board: city planning, finance, real estate development, and resource conservation.<sup>25</sup>

Moreover, the Trust was to receive not more than \$25 million for operations until it had adopted a management plan, and therein was to identify a schedule of declining appropriations that would cease 15 years thereafter.<sup>26</sup> The General Accounting Office was required to conduct a "comprehensive study of the activities of the Trust" to evaluate whether it was making progress toward self-sufficiency both three years and seven years after the first meeting of the Board of Directors of the Trust.<sup>27</sup>

Congress gave the Trust significant freedom to meet its obligation. The Board was given unique borrowing authorities: the Trust can guarantee loans up to 75 percent to tenants for restoration, subject to

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21. Compare H.R. 3433, 103rd Cong. (1994), with H.R. 1296, 104th Cong. (1996).

22. Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333, § 103(a), 110 Stat. 4093, 4098 (1996).

23. *Id.* § 104(c) (emphasis added).

24. *Id.* § 104(o) (emphasis added).

25. *Id.* § 103(c)(1)(B).

26. *Id.* § 105(a).

27. *Id.* § 106(c). Note that the NPS's GMP had presumed continuing appropriations between \$16 and \$25 million to support its Presidio vision. The GMP also presumed substantial philanthropic contributions that were not forthcoming. See THE PRESIDIO TRUST, PRESIDIO TRUST MANAGEMENT PLAN: LAND USE POLICIES FOR AREA B OF THE PRESIDIO OF SAN FRANCISCO (2002), available at [http://www.presidio.gov/About\\_the\\_Presidio/PlanningForTomorrow/](http://www.presidio.gov/About_the_Presidio/PlanningForTomorrow/) (last visited Aug. 3, 2004).

appropriations and the approval of the Secretary of the Treasury, and can borrow money from private banks.<sup>28</sup> In addition, the Trust has access to a pool of \$50 million that it can borrow, interest free, from the U.S. Treasury. The Trust was also allowed to hire, compensate, and fire staff without regard to normal civil service protections.<sup>29</sup> And, although the Presidio remained a part of the GGNRA geographically, it was not a part of the NPS system. Hence, it was freed from compliance with all normal NPS procedures, policies, protocols, regulations, and cultural tics.<sup>30</sup>

However, this did not constitute total discretion. Relevant federal environmental laws such as the National Environmental Policy Act's Environmental Impact Statement (EIS) still constrain the Trust. Most critically for managers of a site with more than 500 historic buildings, Trust programs also have to comply with the National Historic Preservation Act.<sup>31</sup> And the NPS was successful in preserving its authority to provide interpretive and educational programs on Trust property. The NPS also prevailed in binding Presidio management to the generalities of the GGNRA legislation and the GMP. However, the Act specifically rejects the global center for do-gooders notion and requires the Trust to evaluate tenants on the basis of whether they can "enhance the financial viability of the Presidio" and contribute to the restoration of the buildings.<sup>32</sup>

#### D. Management under the Trust

Things did not get off to a good start for the newly minted Presidio Trust. Problems were perhaps inevitable, but a debacle was not. The public was angered and continues to be confused by the continuing cycle of first NPS and now PT planning for the site. The first executive director of the trust was widely regarded as abrasive, fast and loose with funds, and insensitive to the public.<sup>33</sup> After his salary, including free

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28. Omnibus Parks and Public Lands Management Act § 104(d).

29. *Id.* § 103(c)(1)(B)(7) (The NPS won some protection and priority placement within the NPS for its former Presidio employees.).

30. Elsewhere we have argued that it is difficult to achieve hoped-for benefits with freedom from such structures because the public insists that familiar processes associated with public resource planning prevail even when not required. See Jon A. Souder et al., *Is State Trust Land Timber Management "Better" Than Federal Timber Management: A Best Case Analysis*, 5 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 1 (1998).

31. National Historic Preservation Act, 16 U.S.C. § 470f (2000).

32. Omnibus Parks and Public Lands Management Act § 104(n).

33. See, e.g., David R. Baker, *Presidio's Neighbors Looking to a New Era of Cool Relations with Departed Trust Chief*, SFGATE.COM, Dec. 12, 2001, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2001/12/12/MN234193.DTL> (last visited Aug. 3, 2004); Glen Martin, *Under Gun, Presidio Chief Quits: Misspending Has Long Been*

housing, was revealed to be in excess of \$300,000 a year, he was eased out.<sup>34</sup> It will take a long time for early negative perceptions to fade.

Understandably, relations with the GGNRA staff, which had lost the jewel in its crown, were strained. So were relations with the proximate public, who regard the Presidio as their own backyard and fight any changes that would increase visitation, as well as with the more general public, who feared that the Presidio had been taken over by a real estate development operation. Why that was demonstrably worse than the Army is not clear, but it was not the do-gooder center promised by the NPS either. Finally, the city government and its high-flying Mayor Willie Brown were irate at being cut out of the Presidio action.

Yet, if the citizens were willing to engage in heated discussions of whether profit had any place in a national park, the Board did not have that luxury. The law was clear that the Trust must become self-sufficient relatively quickly.<sup>35</sup> It was also clear that, as the successor to the previous military operation, the Presidio was an area of exclusive federal jurisdiction. The Mayor was without power to insist upon low-cost housing in Area B, and he was moreover unable to impose any taxes or other controls on the property.<sup>36</sup>

Gradually, the Trust got moving. In March 1999, it adopted a resolution translating the general purposes of the GGNRA act and the general purposes of the GMP (not the particulars), which are controlling on the Trust, into a set of objectives for Trust programs.<sup>37</sup>

The Trust also moved on its biggest and most controversial project, a ground lease to Lucasfilm to transform the Letterman Army Hospital site into a digital arts live-work community.<sup>38</sup> Irregularities in the bidding were disconcerting to other bidders—who perceived, with

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*Alleged*, SFGATE.COM, Dec. 11, 2001, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2001/12/11/MN134018.DTL> (last visited Aug. 3, 2004) (examples of a series of articles appearing in the San Francisco Chronicle in December of 2001 about Meadows' management style and management failings).

34. See Philip Matier & Andrew Ross, *Presidio Boss' Pay as Stunning as the View: With Perks Added, He Pulls in \$350,000 a year*, SFGATE.COM, Jan. 3, 2000, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/01/03/MN79226.DTL> (last visited Aug. 3, 2004).

35. Omnibus Parks and Public Lands Management Act § 105(b).

36. The Presidio is almost like a separate state—all law enforcement, crimes, and legal proceedings are federal—seemingly paralleling the jurisdictional status of an Indian reservation.

37. Resolution 99-11, H.R. 4236, 104th Cong. (1996), available at <http://www.presidio.trust.gov/archive/documents/99-11.htm> (last visited Aug. 3, 2004).

38. Because of the terrible transportation in and out of the Presidio, an important element of the plan is that workers—Trust, NPS, or Lucasfilm employees—reside at the site.

some justification, that Lucas had been allowed to enter the process very late in the game and without having cleared all the preliminary hoops—and provided anti-Trust/anti-development activists an opening to debate again whether the site should be managed to generate revenues.

The Board concluded that the best way to achieve what is by far the biggest historic preservation project in the country was to involve leaseholders through a “tax credit” project. Under NHPA, developers are allowed deductions off their income taxes for restoration expenses.<sup>39</sup> Only the most intense and loving restorations qualify for the maximum 20 percent deduction. To accomplish approximately 470 restorations with no capital budget and limited borrowing power,<sup>40</sup> the Trust must attract master tenants like Lucasfilm to undertake them. In spite of intense and continuing controversy, the Lucasfilm deal also signified to the San Francisco business community that the Presidio was no longer looking for do-gooders. The Trust was serious about involving them in business transactions that could make a profit.

One Board member characterized the frequent assertion that the Trust does not need the Lucasfilm deal as “sheer nonsense.” The Board regards Lucas as an imaginative and environmentally sensitive developer who is willing to spend money to do a creative project. And he is 15 percent of the budget.

### E. Plans at a Glance

An overview of the differences between the original NPS plan and the PT plan that emerged demonstrates that the end result is not, in square-foot terms, all that different (Table 1).

If differences are not dramatic, what is the public criticism really all about? There seems to be three basic refrains. The first is the familiar

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39. NAT'L PARK SERV., FEDERAL EFFECTS OF NATIONAL HISTORIC LANDMARK DESIGNATION, at <http://www.cr.nps.gov/nhl/effects.htm> (last visited Aug. 3, 2004).

The Tax Reform Act of 1986 revises the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Tax Recovery Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984, and as of January 1, 1987, provides for a 20 percent investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings.

*Id.*

40. The Act allows the Trust to borrow up to \$50 million from the U.S. Treasury. The Trust did so almost immediately to pay for basic infrastructure—roads, electricity, water—that would make the buildings basically leasable. See Hellmann, *supra* note 16, at 364.

NIMBY<sup>41</sup> plaint: no changes in my park. Parks that are no longer remote—or were never intended to be remote—from significant population groups face this problem nationwide.

The second is a principled objection to commercial development in a national park. Yet, the mere fact of commercial establishments within a park should not be too surprising to a citizenry that lives so close to Yosemite Valley. The difference is that the Presidio is heading in the direction of self-sufficiency that was promised by park advocates in the final third of the nineteenth century. And it has been given borrowing powers and other tools to help it achieve that priority. It resembles a commercial establishment in many particulars. Part of the criticism of the model may be related to the fear that the Trust simply cannot make it—it is, with all the necessary restoration, beginning life approximately \$1 billion in debt (a conservative estimate). At a time when commercial real estate is going begging and in a place without adequate transportation access, the prospects seem grim. If the model stands, the Presidio goes on the block. One way to deflect that possibility is to attack the model.

The third, related to the second, is that the PT model must be stamped out before it pollutes other parks. Critics assert that the “profit-making” from the park is an evil requiring no further explanation.<sup>42</sup> NPS faithful believe that the nation ought to pay for national parks, and perhaps they wonder whether the agency can hold its own in the face of continuing pressure to pay its own way. This fear was given a clear referent by President Clinton’s rather striking assertion at the signing of the bill that we have a “blueprint for national parks that one day will be able to sustain themselves without Government funds.”<sup>43</sup> But is that a reasonable fear (or hope, again depending on your denomination)? The recently enacted acquisition of the Baca Ranch (Valles Caldera) near Los Alamos provides a significant opportunity to assess the probabilities on that issue.

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41. NIMBY stands for “not in my backyard,” a well-known phenomenon where citizens support something in the abstract—like a homeless shelter—as long as it is located far from their own neighborhood. In this case the locals did not want their neighborhood park altered in any way. Though perhaps in the abstract they liked the idea of a self-sufficient park, they did not want to make any changes in their favorite spots on the Presidio to facilitate such a park’s creation.

42. Johanna H. Wald, *City and the Environment Symposium: Presidio Trust and Our National Parks: Not a Model to Be Trusted*, 28 GOLDEN GATE U. L. REV. 369 (1998).

43. Hellmann, *supra* note 16, at 367.

## II. VALLES CALDERA NATIONAL PRESERVE

### A. Ancient and Recent History

The Jemez Mountains of North-Central New Mexico are a dormant volcanic complex covering more than 1000 square miles.<sup>44</sup> Most of the range is in public ownership, as part of Santa Fe National Forest or Bandelier National Monument, and has been since the late nineteenth century. Valles Caldera, a resurgent caldera,<sup>45</sup> lies near the center of the range on an old Spanish land grant known as the Baca Ranch and was owned, until quite recently, by a real estate speculator from Texas. The Valles Caldera is an "enormous depression created by a massive volcanic eruption millions [of] years ago, that measures more than half a mile deep and almost 15 miles across."<sup>46</sup> By all accounts, it is an incredibly beautiful place, remote but close enough to the burgeoning population centers of Albuquerque, Santa Fe, and Los Alamos to have an important role in regional and ecosystem protection and recreation. It has also been a site of great import to indigenous peoples<sup>47</sup> of the region for many centuries and has considerable value as an archeological treasure as well.

More to the point here, perhaps, the Baca Ranch has also been the focus of considerable federal agency covetousness. The Santa Fe National Forest was established in 1915<sup>48</sup> during a period of sorting out the old Forest Reserves, and a year later the Bandelier National Monument was designated. The monument was administered as a part

44. AM. GEOL. INST., UPDATE ON THE FEDERAL ACQUISITION OF THE VALLES CALDERA (July 25, 2000), at <http://www.agiweb.org/gap/legis106/baca.html> (last visited Aug. 3, 2004).

45. A resurgent caldera begins with an eruption from under older volcanic rocks. Ring-shaped fractures propagate out of the chamber and vent steam and gas. Jets of *pumice* and *ash* follow at high speeds into the atmosphere. Magma froths, expands, and flows up the vent. Rocks overlying the magma begin to collapse along the fractures into the now emptied chamber. Pyroclastic flows continue as ash and deeper parts of magma flow across the surface covering the caldera and surrounding area. Minor volcanic activity can persist along the ring fracture for as much as a million years. The crater is quickly occupied by a crater lake. This flat-floored crater doesn't stay this way for long; the magma, now depleted in gases, continues to slowly rise. The crater floor is pushed up as much as 1 kilometer (.6 miles), forming a giant "blister." In the case of the Valles Caldera, this giant blister is Redondo Peak, which is 1 kilometer (.6 miles) above the present day caldera floor. See CALVIN J. HAMILTON, RESURGENT CALDERAS AND THE VALLES CALDERA, at <http://www.solarviews.com/eng/valles.htm> (last visited Aug. 3, 2004). See also R.L. Smith & R.A. Bailey, *Resurgent Cauldrons*, GEOL. SOC. AMER. MEM. 116, 613-62, (1968) (defining resurgent calderas).

46. AM. GEOL. INST., *supra* note 44.

47. These include Pueblo Indians and their ancestors.

48. USDA FOREST SERVICE, WELCOME TO THE PECOS/LAS VEGAS RANGER DISTRICT, at <http://www.fs.fed.us/r3/sfe/districts/pecosLV/> (last visited Aug. 3, 2004).

of the forest until it was transferred to NPS control in the 1933 reorganization of historic sites and monuments.<sup>49</sup>

The acquisition of the monument was to be “only a stepping stone” to major NPS expansion in the area. In the 1930s, the NPS cited the region’s cultural resources as a rationale for expansion. In the 1940s, the NPS, never very welcoming to archeological ruins, advocated for a geologic national park. “Instead of comparing the Pajarito to Mesa Verde,” Rothman notes, “the Park Service would now try to compare it to...Yellowstone, Yosemite, and the Grand Canyon.”<sup>50</sup> In the 1950s and 1960s, the NPS argued for a comprehensive natural national park of more than a million acres of public and Forest Service land, but that was never a realistic possibility.

The NPS then worked on land exchanges with the Los Alamos National Laboratory and the Atomic Energy Commission for World War II additions to the neighborhood, which served as a “buffer zone for its testing facilities.”<sup>51</sup> A small land exchange reignited the agency quest for a national park, but just as that ball got rolling, a group of Texas investors headed by James P. Dunigan purchased the Baca Ranch. The 1963 acquisition of the nearly 95,000 acre cattle ranch, including six of the caldera valleys and the collapsed volcano, put the kibosh on the NPS plan. Dunigan opposed further attempts at land acquisition, rallying behind the argument that increasing the National Park would cut off economic opportunities in the area.

It appears that Dunigan had his own aspirations for development of the property. In April 1963, the *Los Alamos Monitor* reported that plans included a ski area, a racetrack, and a resort community. Dunigan opted, after considerable bad publicity and pressure from state and local licensing authorities, for a working ranch. But the record suggests that the property did not exactly fit the image of “careful husbandry [and]...sustainable land development and use”<sup>52</sup> that Congress later lauded when acquiring it. In 1964, Dunigan sued the holder of a 99-year timber lease on his land for cutting unnecessary roads, denuding the region of mature trees, and destroying the surface value of the land.<sup>53</sup> In addition, Dunigan leased the entire holding for

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49. The history that follows is adapted/paraphrased from HAL ROTHMAN, BANDELIER NATIONAL MONUMENT: AN ADMINISTRATIVE HISTORY (1988), available at <http://www.nps.gov/band/adhi/adhi.htm> (last visited Aug. 3, 2004).

50. *Id.* ch. 3.

51. *Id.*

52. 16 U.S.C. § 698v(a)(5) (2000).

53. ROTHMAN, *supra* note 49, ch. 3.



minerals, steam, and geothermal and thermal energy exploration and production.<sup>54</sup>

The NPS tried once more for a park, listing the Baca Ranch in its first set of proposals submitted in response to the 1975 “park-of-the-month” bill.<sup>55</sup> The agency used the ranch’s 1975 designation as a National Natural Landmark and the 1962 efforts to make it a National Park as supporting arguments. The effort failed—in part because the Acting Regional Director of the NPS Southwest Region concluded the area was too heavily compromised. “The almost blanket uses of the area for geothermal exploration and development would make preservation and management of the area as a national park or monument very difficult,”<sup>56</sup> wrote Lorraine Mintzmeyer, proposing a National Preserve instead. However, in the early 1980s, just as Dunigan finally appeared ready to negotiate with the NPS, he died of a heart attack, leaving the property in trust for his two minor sons, and the trustees did not want to sell.<sup>57</sup>

When the possibility of a sale presented itself again in the late 1990s, the New Mexico congressional delegation was unsympathetic with the idea of an NPS unit, and the initiative shifted to the U.S. Forest Service. In 1990, legislation authorizing a boundary adjustment gave authority to the Forest Service to study the Baca location and assess options for acquiring the property in whole or in part.<sup>58</sup> In 2000, the land was acquired and the preserve established.<sup>59</sup>

## B. The Act

Given its recent history, the congressional finding that “careful husbandry of the Baca” by Dunigan and his heirs allows the property to serve as a “model for sustainable land development and use”<sup>60</sup> must be taken with a grain of salt. More accurately, the Congress also found that “experimental management”<sup>61</sup> of the ranch could provide a test of “new methods of public land management that may prove to be cost-effective

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54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. See USDA FOREST SERVICE, REPORT ON THE STUDY OF THE BACA LOCATION NO. 1: SANTA FE NATIONAL FOREST, NEW MEXICO (1993); see also Baca Location No. 1 Land Acquisition and Study Act of 1990, Pub. L. No. 101-556, § 5, 104 Stat 2762 (authorizing the U.S. Department of Agriculture study).

59. See VALLES CALDERA NATIONAL PRESERVE, ABOUT US, at <http://www.vallescaldera.gov/about.php> (last visited Aug. 3, 2004).

60. ROTHMAN, *supra* note 49, ch. 3.

61. 16 U.S.C. § 698v(a)(5) (2000).

and environmentally sensitive,"<sup>62</sup> "allowing and providing for the ranch to eventually become financially self-sustaining."<sup>63</sup>

Congress defined the purposes for the acquisition<sup>64</sup> to include protection of the scientific, scenic, historic, and natural values of the ranch; provision of public recreation; provision of sustained yield management of the ranch for timber and livestock production, consistent with other purposes of the Act; and provision of a blending of public and private administration "to promote long term financial sustainability consistent with the other purposes of this act."<sup>65</sup>

In contrast to the Presidio, the Valles Caldera is not a "land-locked" or isolated preserve. The Baca Ranch is interconnected with huge wildland areas including National Forest, Bureau of Land Management, and privately managed ranch lands. Boundaries delineated by nothing more than a barbed wire fence remain permeable to native wildlife.<sup>66</sup> Substantial native flora and fauna remain in the landscape, and the large scale of the preserve and its surrounding lands makes prospects for long-term conservation of these species good. In addition, the lack of intense structural development and population centers bordering on the property makes the functioning of large-scale ecological processes like fire and genetic exchange possible.<sup>67</sup> The entire ranges of species can be protected; for example, the preserve includes the largest elk herd in New Mexico.<sup>68</sup> At the same time, the interconnectedness of these lands and the ecological dynamics and processes that transcend boundaries call for management programs that can

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62. *Id.* § 698v-2(a)(12).

63. *Id.* § 698v-2(a)(8) (Never mind the split infinitive – notice instead the "eventually" and the "allow and provide" rather than "require" by a certain date.)

64. The acquisition purposes are one part of a set of three. The act also defines purposes for the National Preserve and for the Trust established to manage it. *Id.* § 698v-3, 698v-4.

65. *Id.* § 698v-2(b)(4). Again note that the management is to promote, not achieve, financial self-sustainability, and only then when it is consistent with the other purposes of the act. The purposes of the acquisition are not precisely the same as the purposes of the National Preserve, which include specifically "multiple use and sustained yield of renewable resources..." *Id.* § 698v-3(b).

66. In fact, the preserve offers "the best elk hunting in New Mexico." VALLES CALDERA TRUST, 2004 ELK HUNTS, at <http://www.vallescaldera.gov/lottery/index.php?PHPSESSID=8f52565f6838fea582e511efc395ebf7> (last visited Aug. 5, 2004).

67. See USDA FOREST SERV. SW REGION, VALLES CALDERA/JEMEZ FIRE RESTORATION PROJECT: SCIENCE-BASED ECOLOGICAL RESTORATION AND HAZARDOUS FUELS REDUCTION (2004), available at [http://www.fs.fed.us/r3/spf/cfrp/2004program/pdf/rfp\\_example\\_tnc.pdf](http://www.fs.fed.us/r3/spf/cfrp/2004program/pdf/rfp_example_tnc.pdf) (last visited Aug. 5, 2004) (example of a fire restoration project in the area).

68. See THE WILDERNESS SOC'Y, VALLES CALDERA NATIONAL PRESERVE AND THE VALLES CALDERA COALITION, at <http://www.wilderness.org/WhereWeWork/NewMexico/caldera.cfm?TopLevel=Caldera> (last visited Aug. 5, 2004).

operate at a similar scale. To realize its conservation potential, the property needs to be managed as part of a greater whole.

Under the Act, money for acquisition was to be procured through appropriated or donated funds, exchange, contribution, or donation of land. Land and Water Conservation Fund money was authorized and appropriated for the purchase. A small portion of the property within Bandelier National Monument was to be administered by the NPS; about 5000 acres were to be sold for watershed purposes to the Santa Clara Pueblo. Other than that, the Secretary of Agriculture was put in charge of the Preserve until the Valles Caldera Trust was ready to accept authority over the newly acquired federal land. The Trust was to assume authority over the land as soon as the Secretary determined that provisions had been made for "essential management services."<sup>69</sup>

The Trustees here differ markedly from the financial and managerial wizards that dominate the Presidio Board: two federal bureaucrats (Santa Fe National Forest Supervisor and Bandelier National Monument Superintendent) are joined by seven presidential appointees with expertise or experience in (1) domesticated livestock management, (2) game and non-game wildlife populations, (3) sustainable forest land management, (4) nonprofit conservation activities on national forests, (5) financial management, (6) the cultural and natural history of the region, and (7) local customs and state or local New Mexico government. At least five must be New Mexico residents.<sup>70</sup>

As in the Presidio, within two years after assuming responsibility for the Preserve, the Trustees were to develop a comprehensive management program. The Trust was to provide for the operation of the preserve as a working ranch, consistent with the preservation of the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values; multiple use and sustained yield of the Preserve's renewable resources; public use and access; and a management regime that benefits local communities and small businesses. The management program was to include enhanced coordination of management objectives with those on surrounding National Forest lands; cost savings to the Trust through exchange of services; and optimal generation of income based on existing market conditions, to the extent that it does not "unreasonably diminish the long-term scenic and natural values of the area or the multiple use and sustained yield capability of the land."<sup>71</sup> The Trust is also encouraged to

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69. The formal transfer took place in July 2002, a little under a year after the Trustees had hired an Executive Director and a Site Manager.

70. 16 U.S.C. § 698v-5(a)(2) (2000).

71. *Id.* § 698v-6(d)(6).

use lotteries and auctions to allocate recreation and hunting access to limit use to the land's capabilities.

An interesting third layer of purposes is added to the acquisition purposes and the preserve purposes listed above. The Trust is a "wholly owned government corporation"<sup>72</sup> that is to provide management and administrative services for the preserve; establish policies; receive and collect funds, and spend them; and cooperate with federal, state, and local government units and Indian tribes and Pueblos.<sup>73</sup>

The Preserve is subject to all laws applicable to the Forest Service except that it can, as at the Presidio, hire, compensate, and fire its employees at will so long as nobody makes more than the Forest and Monument Supervisor/Superintendent (an issue at the Presidio). This means, among other things, that the Preserve qualifies for payments under the Payments in Lieu of Taxes Act.<sup>74</sup>

Similar to the Presidio, within two years after its first Board meeting, the Trust is required to submit to Congress a plan to reduce the annual congressional appropriation to zero within 15 years of the acquisition. As at the Presidio, the GAO will conduct two studies, three and seven years after VCT assumes administrative authority, reporting on Trust activities and whether the Trust is meeting its "responsibilities under this title."

Yet, unlike the Presidio, the Valles Caldera faces no penalty for failure. Specifically, "[t]he Valles Caldera Trust shall terminate at the end of the twentieth full fiscal year following the acquisition of the Baca Ranch...."<sup>75</sup> However, if it believes after the fourteenth full fiscal year that it has met the goals and objectives of the management program "but has not become financially self-sustaining, the Board may submit to the Committees of Congress, a recommendation for authorization of appropriations beyond that provided under this title."<sup>76</sup> Four years later, the Board will report to the Secretary on whether the trust ought to be extended, and the Secretary will recommend the same to Congress.<sup>77</sup>

If the Trust does terminate, the Preserve will be returned to the jurisdiction of the Secretary of Agriculture and managed "as a part of the Santa Fe National Forest."<sup>78</sup> Thus, the incentive that drives the Presidio

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72. *Id.* § 698v-4(a).

73. *Id.* § 698v-4(b).

74. *Id.* § 698v-3(d). Qualification is not unreasonable here, because Valles Caldera was private land taken off the tax rolls, while the Presidio was never on the tax rolls.

75. 16 U.S.C. § 698v-8(a).

76. *Id.* § 698v-8(b)(1)(A).

77. *Id.* § 698v-8(b)(1)(B).

78. *Id.* § 698v-8(c).

Trust—break even or we put it on the open market—is not remotely in view at Valles Caldera.

### C. Where Are We Now?

The Valles Caldera Trust Board has interpreted its rather mushy mandate in two particularly important ways. First, on December 13, 2001, it adopted a set of ten management principles. The only mention of self-sufficiency is found in the third: “We will strive to achieve a high level of integrity in our stewardship of the lands, programs and other assets in our care. This includes adopting an ethic of financial thrift and discipline and exercising good business sense.”<sup>79</sup>

In addition, the Board, like the Presidio Trust, interpreted its mandate in a web page full of Frequently Asked Questions. The first, “concerning how strictly the Trust will pursue financial self-sustainability,” is the most important in the present context. The response began with an assertion that “financial self-sustainability is one of the six goals the management program will be designed to pursue.” And, in case we missed the point, the Board added, “Please note that income generation is only one among six ostensibly equal goals and that it must not be pursued to the detriment of the others.”<sup>80</sup>

Thus far the Board has made two significant hires, both without undue repercussions. The Executive Director of the Trust worked, as a member of Senator DiConcini’s staff, to craft the Valles Caldera Preservation Act. The new Site Manager has been a district ranger and recreation manager on two districts of the Santa Fe National Forest.

It is convenient to have a manager so closely associated with the Forest Service—surely far different from the hostile relations that greeted the Presidio Trust when it was taking land away from the NPS. It is also

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79. VALLES CALDERA TRUST, VALLES CALDERA TRUST MANAGEMENT PRINCIPLES (2001), at [http://www.vallescaldera.gov/about\\_mgmt.php](http://www.vallescaldera.gov/about_mgmt.php) (last visited Aug. 5, 2004).

80. VALLES CALDERA TRUST, FREQUENTLY ASKED QUESTIONS (on file with author). According to the Valles Caldera Preservation Act:

The purposes of the Trust are—(1) to provide management and administrative services for the Preserve; (2) to establish and implement management policies which will best achieve the purposes and requirements of sections 698v to 698v-10 of this title; (3) to receive and collect funds from private and public sources and to make dispositions in support of the management and administration of the Preserve; and (4) to cooperate with Federal, State, and local governmental units, and with Indian tribes and Pueblos, to further the purposes for which the Preserve was established.

16 U.S.C. § 698v-4(b) (2000).

worth noting that most of the trust materials are clearly marked “© 2002 USDA Forest Service All Rights Reserved.”

There is no doubt that the “agency culture”<sup>81</sup> of the Forest Service, as well as the potential future acquisition of the Preserve by the U.S. Forest Service, has contributed to the better relationship between the two. The Forest Service is rooted in a doctrine of “sustainable use,” linking it to timber production on National Forests. Though there has been a shift to a more preservation-oriented mandate than that envisioned by Gifford Pinchot,<sup>82</sup> there is not a widespread pretense of management for a pristine environment within the agency or among its supporters.

The Trust has made preliminary announcements of its grazing strategy and elk-hunting programs. Both take an experimental approach to determining the intensity of management. The Trust proposed to start “conservatively with fewer livestock numbers than traditional stocking rates until a more comprehensive strategy can be established.” It also planned to construct six to ten livestock exclosures (1 to 10 acres in size) for monitoring purposes and to use range riders to control the cattle.<sup>83</sup> Most recent proposals advocate grazing about one-third the animals that grazed the area in 1985. Regarding allocation of elk permits, the Trustees were frank: “This is an experiment.” The goal in using both an auction and a lottery is “to provide hunters of all means” a chance to participate, “while still generating revenues to support the Preserve. Although few sportsmen will be able to afford the auctioned hunts, virtually all would

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81. The Forest Service, as opposed to the National Park Service, has origins in the doctrine of sustainable use—the use of natural resources in a way that leads to long term, continuous production at a predictable level—rather than preservation or recreation. Multiple Use-Sustained Yield Act of 1960, 16 U.S.C. §§ 528-531 (2000). Agency managers have traditionally been drawn from those trained in timber production, for example, though this is undergoing an evolution toward more emphasis on recreation and conservation.

82. Gifford Pinchot, the first Chief of the Forest Service, restructured and professionalized the management of the national forests, as well as greatly increased their area and number. He had a strong hand in guiding the fledgling organization toward the utilitarian philosophy of the “greatest good for the greatest number.” Pinchot added the phrase “in the long run” to emphasize that forest management consists of long-term decisions. During his period in office, the Forest Service and the national forests grew spectacularly. In *Breaking New Ground* he wrote, “Without natural resources life itself is impossible. From birth to death, natural resources, transformed for human use, feed, clothe, shelter, and transport us. Upon them we depend for every material necessity, comfort, convenience, and protection in our lives. Without abundant resources prosperity is out of reach.” GIFFORD PINCHOT, *BREAKING NEW GROUND* 505 (1998).

83. THE VALLES CALDERA TRUST, DOCUMENTS: GRAZING PROPOSAL (2002), at [http://frogger.vosn.net/~vallesca/documents/grazing\\_proposal2-26-02.php](http://frogger.vosn.net/~vallesca/documents/grazing_proposal2-26-02.php) (last visited Aug. 5, 2004).

be able to afford the purchase of a \$25 lottery ticket for a chance for such an opportunity.”<sup>84</sup>

### III. DISCUSSION AND CONCLUSIONS

#### A. Regarding Trusts

First, it should be obvious that neither the Presidio Trust nor the Valles Caldera Trust is a trust in the specific sense that we have discussed elsewhere in connection with state trust lands.<sup>85</sup> It is true that, as corporations, both the PT and the VCT are fiduciary organizations, involving resource management by a designated group on behalf of others. However, the technical rules applying to that kind of trust—the *cy pres* doctrine, the details of accountability and judicial enforcement, and the peculiar role of beneficiaries—do not apply in either context. Some dismiss both of these organizations as just a continuation of old subsidies. The two points are not necessarily related. As to the first, nobody ever did more than pretend that these were trusts. As to the second, trusts may or may not be subsidized in ways that distort incentives to managers.

#### B. Regarding Government Corporations

Although Congress calls them trusts, Congress really just established two “wholly owned government corporations.” What that means is not obvious. Scholarship in this area is clear: a wholly owned government corporation is specifically an agency of the federal government. It owns all, rather than part, of the resources in its care. It is supposed to raise some or all of its operating expenses, ideally to break even, and it is subject to all rules guiding the behavior of government agencies except those from which Congress specifically exempts it. Beyond that, when seeking to understand a specific government corporation, one must look at the specific authorizing statute—there is not much in the way of guidance, guidelines, or parameters to be found in the Government Corporation Control Act.<sup>86</sup>

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84. VALLES CALDERA TRUST, FREQUENTLY ASKED QUESTIONS (on file with author).

85. See generally JON A. SOUDER & SALLY K. FAIRFAX, *STATE TRUST LANDS: HISTORY, MANAGEMENT, & SUSTAINABLE USE* (1996).

86. 31 U.S.C. §§ 9101–9110 (2000). Examples include the Commodity Credit Corporation, the Export Import Bank of the United States, the Government National Mortgage Association (Ginnie Mae), the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority, the U.S. Postal Service, the Panama Canal

### C. Regarding the Institutional Fit Between the PT in the Park Service as Opposed to the VC Trust and the Forest Service

The Valles Caldera Trust has found a much happier home than the Presidio Trust. The PT labors in the still difficult environment of a partner unit, the GGNRA, which has just lost its heart. The VC Preserve, in direct contrast, is a welcome addition to the Forest Service family. And although relations between PT and GGNRA staff appear to be improving, hostility remains within the agency, as within the public, to the self-sustaining mandate imposed upon the PT.<sup>87</sup>

It is also important to notice that neither of these “experiments” is unprecedented, no matter how often the press and participants assert that they are. It is, in fact, a bigger departure for the Forest Service than the NPS. Because most forests were established under general acts, either the 1891 General Land Law Reforms or the Weeks Act (1911), national forests tend to appear, and be, quite similar in terms of acquisition and management authorities. In contrast, as parks are generally established by an individual act of Congress,<sup>88</sup> the group varies widely. The PT arrangement is not all that different in its basic commitments from the Charlestown Navy Yard in Boston,<sup>89</sup> another base closure act park.<sup>90</sup> This is particularly important when evaluating allegations that the PT is a virus that will infect the rest of the NPS system unless it is excised.<sup>91</sup> The VCT is an enormous departure from the Forest Service model in terms of

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Commission, the Pennsylvania Avenue Development Commission, and the Oklahoma City National Memorial Trust.

87. The GGNRA has been quite public in criticizing the PT for attempting to comply with its founding legislation. This is evident in GGNRA Supervisor Brian O’Neil’s 36-page commentary on the PT’s draft management plan. THE PRESIDIO TRUST, FINAL ENVIRONMENTAL IMPACT STATEMENT: PRESIDIO TRUST MANAGEMENT PLAN—LAND USE POLICIES FOR AREA B OF THE PRESIDIO OF SAN FRANCISCO 5-1 to 5-18 (2002).

88. However, parks reserved under the Antiquities Act are not established by an individual act of Congress. *See generally* Sally K. Fairfax et al., *Beyond Bucks and Acres: The Limits of Land Acquisition as a Conservation Strategy in the United States, 1789–2002*, ch. 3 (forthcoming, MIT Press).

89. The NPS split jurisdiction with the Boston Redevelopment Administration (BRA) in much the same way that the NPS shares the Presidio with the Trust. The difference seems to be that the BRA is in no sense said to be, trying to be, or likely to be confused with a National Park. It is a redevelopment agency expected to turn a profit. Nevertheless, the two agencies and the two purposes share geographies and missions that appear to be quite compatible.

90. Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 (2000).

91. *See generally* Wald, *supra* note 42 (distinguishing the Presidio from other National Park Systems to establish why the system of self-sufficiency should not be utilized elsewhere).



administrative structure, but not in terms of the basic resources to be managed or practices employed.

#### D. Regarding Public Response

It is clear that the profit-making requirement is far more controversial in San Francisco than in New Mexico. In spite of all our experience with concessions, parks strike many as an inappropriate site for commerce. This compares with a long acceptance, if not enthusiasm, for timber sales, grazing leasing, and similar developments in national forests.

Second, unlike the PT, the Valles Caldera is *opening* to public use and access. This seems like an added benefit for the public. It compares favorably with the appearance of a takeaway at the Presidio, where the established source of public expectations was comprehensively expressed in a visionary plan that anticipated considerably more financial support from Congress, the public, the Army, the state, and the philanthropic community than was forthcoming.<sup>92</sup>

Third, and very much related, the VC has fewer neighbors with either a stake in management or a long tradition of vituperative public participation. The VC hunting experiment seems to suggest that wealthy hunters are going to be required to subsidize the less affluent ones. This is not no-subsidies management but, unless the wealthy ones complain, it deflects local protest.

#### E. The Probabilities

The Presidio Trust is under far more specific requirements than the VC Trust concerning self-sufficiency, and the consequences for failure are quite draconian. This is true in spite of the fact that the VCT began operations as an integrated unit that had been running at a profit, while the PT started with a morass of disintegrated resources and over \$1 billion in debt. We must wonder then, why the PT was given 15 years to swim or be sold, while the VCT has the same amount of time to *try* to become self-sufficient.

The PT could cut its activities and achieve sustainability at a far lower level of rehabilitation and programming. Arguably, however, that would not protect its resources. And, even though some evidence suggests that Congress has known from the outset that amendments to

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92. However, the Crissy Field Marsh restoration was undertaken with approximately \$30 million of private funds. GOLDEN GATE NAT'L PARK ASSOC., *THE HISTORY OF CRISSY FIELD* (2000), at <http://www.nps.gov/prsf/crissy/history.htm> (last visited Aug. 5, 2004).

the act would be necessary,<sup>93</sup> it is also clear that the threat of a General Services Administration takeover and sale is quite real to the Board. The PT is aggressively working to relieve itself of nearly \$1 billion worth of rehabilitation costs in order to become self-sufficient.<sup>94</sup>

To that we must add the fact that the PT presents a far more complex management context than the VC. The Presidio is, in effect, a city within a city. The Presidio Trust buys very little water from the city and is otherwise an area of exclusive federal jurisdiction, responsible for providing police, sanitation and waste removal, water and water treatment, electricity, toxic waste clean up, transportation, virtually *all* the basic services that make an area habitable for 800 buildings and their occupants. The VC Trust, though not unchallenged, is dealing with fewer than a hundred elk hunting permits and 2000 head of cattle.

Meanwhile, the VC Trust is under no pressure to do anything more than experiment with marketing mechanisms for Preserve resources. For similar private ranches, the value of the land is the most significant asset and the most costly investment. The removal of this factor as part of the economic equation for the ranch, whether it is in taxes, mortgage debt, or opportunity costs, is already a huge step toward VC self-sufficiency.

The VC Trust is buoyed by successful experiments with cooperative ranch management in the region. It can be seen as a co-opting of vernacular initiatives in landscape-scale natural resource conservation. The Nature Conservancy purchased the Grey Ranch in New Mexico and ran into major opposition from the local community because of cultural and economic costs incurred when a major ranch property is taken out of production. In response, The Nature Conservancy sold the property to a conservation-oriented rancher who worked to develop a basis for environmentalist/rancher cooperation. The Grey Ranch initiated conservation grass bank programs that the VC Trust specifically emulated in allocating forage during New Mexico's continuing drought. The conservation ranches in the area have provided a successful example of coordinated private, federal, and state efforts to achieve sound resource management at the landscape level, and thus in part reshaped the social and cultural setting of the ranching community in the region. The Valles Caldera Trust can be seen as a variation on that theme, but with the federal government owning the land itself and initiating the process.

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93. Hellman, *supra* note 16, at 365 n.197.

94. GEN. ACCT. OFF., *supra* note 15 (examining PT's resources and burdens).

Finally, the Valles Caldera Trust is clearly in a far better position than most other ranches and similar federal units in the nation. Its chances for success seem far greater than the PT's without change in the PT's terms.

## F. What Are We Learning?

At present it is difficult to say much more about the Valles Caldera Preserve than that it is experimenting with management practices that the Forest Service either has never dreamed of or was unable to implement because of statutory or cultural (theirs and the rest of ours) constraints. And they are motivated, not to put economic returns above all things, but to generate some. The Preserve is free of many strangling planning regulations, the expectation that services will be subsidized, and the rigidities of the federal procurement and personnel regulations. It is doing things differently and may teach important lessons about public resource management.

So too is the Presidio Trust. Irrespective of what does happen in 2013, the PT is proceeding as if the constraints were real—it is not actively planning, as was the GGNRA, to run a \$15 to \$25 million a year deficit. It expects to break even when it is supposed to. There is a risk that preservation and public access will be compromised as the Board pursues that goal. But there is also the possibility that the private sector can run the mixed Presidio property better than the NPS. The examples of Union Station in Washington, D.C.,<sup>95</sup> and Faneuil Hall in Boston, the latter a familiar fixture on the Freedom Trail, make that at least a reasonable possibility.<sup>96</sup> There is even the possibility that private enterprises, designed to break even, are capable of managing sacred shrines. Excellent examples include the Mount Vernon Ladies

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95. See The Union Station Redevelopment Act of 1981, 40 U.S.C. §§ 6901–6910, 6921–6924 (2000) (authorizing the Department of Transportation to develop a plan for the development of the station with the goal of making it financially self-sufficient); UNION STATION D.C., at [http://www.unionstationdc.com/intro\\_fm.html](http://www.unionstationdc.com/intro_fm.html) (last visited Aug. 5, 2004). The Union Station Redevelopment Act of 1981 authorized the Department of Transportation to develop a plan for the development of the station with the goal of making it financially self-sufficient. *Id.*

96. Faneuil Hall was built in 1742 as a market and local gathering place and remains the same today. Samuel Adams, Frederick Douglass, William Lloyd Garrison, and Lucy Stone all spoke there. Today market stalls on the first floor service shoppers as they did in Paul Revere's day. The Hall is a cooperating unit of the Boston National Historic Park and is staffed by National Park Service Rangers from 9 A.M. to 5 P.M. daily, except when the Hall is being used for public functions. CITY OF BOSTON, FANEUIL HALL, at <http://www.cityofboston.gov/freedomtrail/faneuilhall.asp> (last visited Aug. 5, 2004).

Association of the Union (1856), the Fort Ticonderoga Association (1931, 1820), and similar ancient preservation organizations.<sup>97</sup>

Another pattern worth noting is that the Congress appears, if we look at just these two units, to be backing off from the self-sufficiency approach. If the PT embraces self-sufficiency, the VCT deviates back to the norm, though with perhaps an important exception. Participation and authority of neighbors is built into the administrative structure for the site. Whether this decentralization of authority can result in lasting management innovations remains to be seen.<sup>98</sup>

Perhaps the most interesting comparison of the two cases lies in the political and environmental setting of each, and the necessity of developing effective relationships with their surroundings. In the case of Valles Caldera, previous efforts to manage private lands for public purposes laid out a road map of sorts regarding how to work with the various individuals and groups with an interest in the land. The Presidio, it seems, is more unprecedented. The path is not one of acquiring a piece of private land and managing it by committee, but one of taking over a piece of property with an extremely complex overlay of private and public claims already in place. In addition, the urban environment is connected in different ways. At Valles Caldera, a fire may move across the fence line. The loss of a ranch may cause the loss of agricultural infrastructure for the entire community. The construction of a housing development may cause problems for all the remaining ranches: the consequences of a failure to collude are easy to observe and appreciate. At the Presidio, cause and effect is more complex and the ramifications include more groups who lose or benefit from each choice.

And at the Presidio, there is not really an option for a "natural seeming" landscape that still provides enough economic return to establish self-sufficiency. Despite 150 years of commercial grazing and extensive mineral exploration, the Valles Caldera is still widely perceived as natural. Continuing livestock grazing and hunting does not threaten that perception. Yet fulfillment of its conservation potential depends on the neighborhood, and the ecological processes that cross property lines. On the other hand, the Presidio is far from any natural state. This offers it the opportunity to be more inward looking in its natural resource programs, relating to neighbors as visitors, lessees, and purchasers, rather than holders of puzzle pieces that must not be lost. In each case, the participants and procedures of the trust have reflected some of the environmental and political realities of the locality. In

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97. See Fairfax et al., *supra* note 88.

98. In 2003, Congress authorized salary payments to the VC trust board members, several of whom were working full-time on the project. GEN. ACCT. OFF., *supra* note 15.

contrast to the "one-size fits all" mentality of centralized federal authority, or government corporations, the trusts must adapt to local conditions from the beginning.

More than moving toward some sort of market approach, both of these ventures more closely resemble an extension of national control via quasi-private landscape preserves. In much of the world, the "inhabited" national park or preserve is a familiar model. Cities or towns of cultural significance may be "privately" owned, but subject to what we would see as unacceptably comprehensive or draconian controls. The Presidio might be seen as a move in this direction from another angle. Rather than starting with rules and regulations and land use planning, it starts with the land, and then surrenders various components of the traditional American federal park and preserve package.

The Presidio Trust might be thought of as an extension of the "working landscape" model to an urban area and is quite innovative in that sense. To be true to the model, community integration and coordination must be well established, and if the model plays out as it has in some other places, the scope of involvement will broaden in a geographic sense. However, the PT is, largely as a result of its status as a former military base, oriented in the opposite direction. It is an area of exclusive federal jurisdiction, almost completely disassociated from the surrounding political system. It is not a part of the local political dialogue. Whether that is an advantage or not remains to be seen.

Finally, it appears that efforts to achieve local management may have at last found a productive vehicle. In spite of success in the legislature, regional and national intransigence and a bevy of lawsuits brought down the Quincy Library Group.<sup>99</sup> It may be that the trust/wholly owned government corporation model provides a template for less federal domination, and more local management, of federal resources.

Many advocates of trusts and of businesslike government operations are disappointed by the PT and the VCT—they do not go far enough to provide a real test of that treasured principle. While true in some particulars, the opportunities for learning, and for comparison with other similar federal units ought not to be overlooked. These are very important increments indeed.

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99. See Edwin Kiester, Jr., *A Town Buries the Axe*, SMITHSONIAN, July 1999, at 70.

<b>TABLE 1: PRESIDIO TRUST AND NATIONAL PARK SERVICE PLANS AT A GLANCE</b>		
	<b>Presidio Trust Plan (1996)</b>	<b>National Park Service General Management Plan (1994)</b>
Vision and Tenant Mission	The Presidio Trust holds preservation of the park's resources for public use as its primary vision; finds tenant diversity fiscally more prudent.	The GMP envisions the park as a "global center" where tenants would be devoted to solving the world's most critical problems.
Housing, Estimated Population & Employment	1,654 residential units (same as today) * 3,770 residents (1,520 more than today-930 less than 1990) * 6,890 jobs (4,870 more than today-1,340 more than 1990)	770 residential units (880 fewer than today) * 1,660 residents (590 less than today-3,040 less than 1990) * 6,460 jobs (4,440 more than today-910 more than 1990)
Public Programs & Visitor Services	Commits to supporting high quality public programs delivered by the Trust, NPS, tenants, and other partners with program expertise. Programs will explore the Presidio's cultural and natural resources.	Assumes tenants will provide public programs beyond traditional NPS interpretation.
Open Space	99 additional acres of open space	99 additional acres of open space
Flexibility & Fiscal Strength	Articulates "preferred" uses, but maintains flexibility to allow for inevitable changes in the marketplace; would achieve self-sufficiency even if revenues are low or costs are high.	Limits potential tenant pool and assigns specific uses to buildings without assessing feasibility; would jeopardize self-sufficiency if revenues are less than expected or costs are higher.
New Construction & Total Building Space	5.6 million square feet of building space (360,000 less than today) * Up to 400,000 square feet of residential construction in already developed areas to replace demolished housing. * Up to 310,000 square feet of non-residential construction, primarily to support rehabilitation of historic buildings.	5.0 million square feet of building space (950,000 less than today). * No residential construction to replace demolished housing. * Up to 170,000 square feet of non-residential construction.
*1994 GMP updated to reflect changes in circumstances		