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## The Presidio Trust and our National Parks: Not a Model to be Trusted

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## ARTICLE

# THE PRESIDIO TRUST AND OUR NATIONAL PARKS: NOT A MODEL TO BE TRUSTED

BY JOHANNA H. WALD\*

### I. INTRODUCTION

The Presidio is unique. As a large area of natural habitat in a congested urban landscape, as a site which retains centuries of historic and prehistoric artifacts, as the longest continually operating military base in the United States, and as the southern promontory of the Golden Gate Bridge, one of the world's most recognized vistas, the Presidio is without equal.

Also unique are the politics which led to the terms under which this national park is now being managed. The 104th Congress, and particularly its leadership, mounted an unprecedented assault on America's public lands, including our national parks. Those leaders called for no less than eliminat-

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ing parks and ending federal ownership and control of vast areas of the public estate. While unsuccessful in this frontal attack, they did succeed in inserting elements of their agenda into otherwise positive or innocuous legislation. The Presidio Trust bill, the topic of this article, came nowhere near accomplishing what those leaders hoped to accomplish. Yet a close analysis reveals troubling provisions heretofore unthinkable for management of our national parks. In sum, while the Presidio Trust legislation could have been worse, it needs to be improved for the sake of the Presidio and cannot be viewed as a model for the management of other parks.

### II. OVERVIEW OF THE NATIONAL PARK SYSTEM AND WHY THE PRESIDIO IS UNIQUE

The idea of *national parks* is a uniquely American concept, ranking with our democratic form of government and the Bill of Rights as one of the best ideas our country has ever had. Since the establishment of Yellowstone National Park in 1872, the National Park System has evolved and been systematically expanded to accommodate our desire to preserve the natural, cultural, and historic treasures which define our landscape and identify us as a nation.<sup>1</sup> Today, there are a total of 375 parks of various different types and different designations or titles within the park system.<sup>2</sup> The Presidio stands out among them all: not only does it have outstanding natural, cultural, and historic values, it also could justifiably bear numerous different designations.

After setting aside Yellowstone, the United States began preserving large tracts of western federal lands as either national parks or national monuments. In general, national parks, such as Yosemite and Sequoia in California, and Glacier in Montana, set aside an array of resources within boundaries

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1. For an overview of the history of the National Park System, *see, e.g.*, DYAN ZASLOWSKY, THESE AMERICAN LANDS: PARKS, WILDERNESS, AND THE PUBLIC LANDS (Island Press 1994).

2. *See* SHARON BUCCINO, ET AL, NATURAL RESOURCES DEFENSE COUNCIL AND NATIONAL TRUST FOR HISTORIC PRESERVATION, RECLAIMING OUR HERITAGE: WHAT WE NEED TO DO TO PRESERVE AMERICA'S NATIONAL PARKS 2 (1997).

that are hopefully large enough to provide them adequate protection.<sup>3</sup> Monuments, on the other hand, usually protect a single, nationally significant resource, whether natural or cultural. Broadly speaking, monuments are smaller than national parks and focus the visitor's attention on the particular feature being preserved. The towering columns of basaltic rock at Devil's Postpile in California's Sierra Nevada mountains and the rich fossils beds at Dinosaur on the border between Colorado and Utah are among the nation's seventy-four national monuments. The newest of our monuments – Grand Staircase-Escalante in Utah – was established in September 1996, by President Clinton.<sup>4</sup> Other types of units which preserve natural resources and are under the jurisdiction of the National Park Service include national preserves, national lakeshores and seashores, national wild and scenic rivers, and national scenic trails.<sup>5</sup>

Early on, national parks and the western monuments were administered by the Department of the Interior.<sup>6</sup> Other national monuments, historic sites, and protected lands, however, were administered by the War Department and the U.S. Forest Service. A 1933 Executive Order transferred sixty-three of these other sites to the jurisdiction of the National Park Service as a means of providing more efficient and consistent protection.<sup>7</sup> This consolidation created a true system of parks protecting both natural and historic resources under a single agency with a single management mandate.

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3. In fact, however, many existing parks are not large enough. Our oldest and largest national park, Yellowstone, is not large enough to support viable populations of many of its wildlife species. See T. W. Clark & D. Zaunbrecher, *The Greater Yellowstone Ecosystem: The Ecosystem Concept in Natural Resource Policy and Management*, 5 RENEWABLE RESOURCES JOURNAL 8-16 (1987).

4. See THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY, ESTABLISHMENT OF THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT BY THE PRESIDENT OF THE UNITED STATES (September 18, 1996).

5. See BUCCINO, *supra* note 2, at 2.

6. The National Park Service was created in the Department of the Interior in 1916, and given responsibility for protecting America's national parks and monuments. See National Park Service Organic Act, 16 U.S.C. §§ 1 et seq (1994).

7. See U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK INDEX, GPO: 1995 - 387-035/20001, at 7.

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Of course, the decision to preserve a wider array of resources as national parks led to the creation not only of more kinds of parks, but also of more designations for them. Today more than half of the units in the park system protect locations and celebrate persons and events important to the Nation's history. From the interpretation of the 2,000 year old artifacts and archeological sites of Ohio's Hopewell Culture National Historical Park, to the protection of our nation's birthplace, Independence Hall in Philadelphia, to the memorialization of the internment of Japanese-Americans during World War II at Manzanar National Historic Site in California, units of the National Park System protect important elements of America's history and pre-history. In addition to national historical parks and national historic sites, our Revolutionary and Civil War history is preserved under such designations as national military parks and national battlefield parks.

Still other areas and their resources are protected under the relatively new designation of National Recreation Area. Originally this designation was applied to parks adjacent to or surrounding man-made reservoirs. Now these areas include other lands set aside by Congress for recreational purposes, the most significant of which are urban recreation areas such as the Golden Gate and Santa Monica Mountains National Recreation Areas. These important parks not only protect nationally significant resources, they also provide a national park experience for many people who are unable to travel farther than the edge of the city and would otherwise never have such an experience.

In general, each of the 375 units of the National Park System concentrates on a particular ecosystem, natural or historic landmark, or a particular period in time as indicated by its particular name or designation. Unlike most park units, however, the Presidio does not have a specific designation: it is actually "only" a part of the Golden Gate National Recreation Area ("GGNRA").<sup>8</sup> What is more, unlike virtually all other parks, it could rightly exist on its own as any one of several

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8. See Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333, 110 Stat. 4093, 16 U.S.C. § 460bb note (1996), Title I – The Presidio of San Francisco, § 101(4) and (5).

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designations – as a national park, a national monument, a national historic park, or a national military park.

From a military perspective, the Presidio is truly unique. In no other park can one find the depth and breadth of military history that is present in the Presidio. In continuous operation from 1776 until it was transferred to the National Park Service on October 1, 1994,<sup>9</sup> the Presidio retains archeological sites, artifacts, and structures from its occupation by the nations of Spain, Mexico, and the United States. Moreover, the Presidio has played a role in every major war fought by the United States and has even helped to protect parks as well. During the early 1900's, Buffalo Soldiers, billeted in the Presidio, regularly rode out to patrol Yosemite, Sequoia and General Grant National Parks.<sup>10</sup> The architecture of the Presidio reflects every major construction period of U.S. military history since 1848.<sup>11</sup>

Yet, the Presidio's historical significance is not limited to the martial. Within its borders are archeological sites that predate European settlement of the area and offer a glimpse into the lives of the native Ohlone people.<sup>12</sup> Some 550 buildings within its borders are on the National Register of Historic Places and "contribute to the national landmark designation for the entire Presidio."<sup>13</sup> It was at Crissy Field on the northern shore of the Presidio that military aviation on the west coast was established.<sup>14</sup> The Presidio served as a refugee center following the devastating 1906 San Francisco earthquake, and then hosted part of the 1915 Panama-Pacific International Exposition that celebrated the city's rebirth.<sup>15</sup>

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9. See H.R. REP. NO. 104-234, at 6 (1995).

10. See NATIONAL PARK SERVICE, FINAL GENERAL MANAGEMENT PLAN AMENDMENT, PRESIDIO OF SAN FRANCISCO, GOLDEN GATE NATIONAL RECREATION AREA, CALIFORNIA 8 (1994) [hereinafter, "NPS, FINAL PRESIDIO GENERAL PLAN AMENDMENT"]. General Grant National Park, established in 1890, was expanded and renamed Kings Canyon National Park in 1940.

11. See *id.* at 7.

12. See *id.* at 8.

13. H.R. REP. NO. 104-234, at 6 (1995).

14. See NPS FINAL PRESIDIO GENERAL PLAN AMENDMENT, *supra* note 10, at 8.

15. See *id.*

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The Presidio also easily fits the designation of national monument. As a national historic landmark<sup>16</sup> sitting on one of the world's most photographed promontories at the foot of the Golden Gate Bridge, the site is one of a kind. Finally, as a national park, the Presidio would still be without peer. Perhaps small for a national park, the site contains a variety of resources not found in areas 100 times its size.<sup>17</sup>

On the edge of an urban area with a population of five million people, the Presidio stands in stark contrast to the congested landscape around it. Some 220 years of military occupation have resulted in the retention of astounding natural features and rich biodiversity. Lobos Creek, which runs along and within the Presidio's southern border, is San Francisco's only remaining free-flowing above-ground stream and supports native riparian habitat.<sup>18</sup> In all, ten native plant communities can be found on the Presidio, including wetlands, grasslands, and sand dunes.<sup>19</sup> The Army's historic forest provides not only a stunning cultural landscape, but also habitat for neotropical migrant songbirds and state and federally listed endangered plant species.<sup>20</sup> The Presidio also harbors miles of hiking trails, tennis courts, and a golf course<sup>21</sup> and receives a high volume of visitors on its own as well as as part of the GGNRA, which is the second most visited of our parks nationwide.<sup>22</sup>

The Presidio is indeed unique. In addition to its outstanding natural, cultural and historic resources, the Presidio has 3.5 million square feet of useable building space. In fact, the former base is a small city, complete with water, sewer, electricity, and telephone systems. Unlike other national parks, where use of resources is forbidden or closely controlled, the

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16. *See id.* at 7.

17. NATIONAL PARKS AND CONSERVATION ASSOCIATION, FACT SHEET: PROTECTING THE SAN FRANCISCO PRESIDIO (1995) [hereinafter "NPCA, PRESIDIO FACT SHEET"].

18. *See id.* at 9.

19. *See id.*

20. *See* PETE HOLLORAN, SEEING THE TREES THROUGH THE FOREST: OAKS AND HISTORY ON THE PRESIDIO (City Lights 1997).

21. *See id.*

22. *See* BUCCINO, *supra* note 2, at App. 1, 84-92.

Presidio's historic buildings must be used. Empty buildings fall apart.

Occupied buildings can be better maintained and protected, thus extending their lives.<sup>23</sup> The simplest and most cost effective way to preserve the Presidio's buildings – which numbered approximately 870 at the time the Trust legislation was enacted<sup>24</sup> – is by renting them and reinvesting the rents in maintenance.

The Park Service, however, is not a real estate agency and lacks the expertise needed to manage and rent these buildings or to finance and supervise the rehabilitation that many of them need.<sup>25</sup> This fact, together with the sheer magnitude of the property management task at the Presidio, provided the original impetus for the notion of creating a new entity to work with the Park Service to carry out this task.<sup>26</sup> That notion and early legislative proposals to accomplish it<sup>27</sup> were drastically different than the final Trust legislation, thanks to the leaders of the 104th Congress and their anti-environmental agenda.

### III. THE ENVIRONMENTAL AGENDA OF THE 104TH CONGRESS: LIQUIDATING THE FEDERAL ESTATE

The legislation creating the Presidio Trust was enacted on the last day of the 104th Congress as part of an omnibus parks bill that, among other things, also created the Tallgrass Prairie National Park and provided protection for Sterling Forest on

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23. See, e.g., NPCA, PRESIDIO FACT SHEET, *supra* note 17.

24. See H.R. REP. NO. 104-234, at 6 (1995).

25. The Park Service has estimated that it would take \$590 million in capitol improvements to restore the Presidio's historic buildings and remove the non-historic ones. See NPS, FINAL PRESIDIO GENERAL PLAN AMENDMENT, *supra* note 10, at 141. It has also conceded that it lacks the necessary expertise. See *id.* at 112.

26. See, e.g., NPS, FINAL PRESIDIO GENERAL PLAN AMENDMENT, *supra* note 10, at 21-22, 114. See also S. 1639, 103rd Cong., (1993); H.R. 3433, 103d Cong., (1993).

27. See, e.g., H.R. 3433, 103rd Cong. (1993) and S. 1639, 103d Cong., (1993), both of which would have created a corporation, the Presidio Corporation, within the Department of the Interior to manage the leasing, maintenance, rehabilitation, repair and improvement of specified properties located at the Presidio.



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the New York/New Jersey border.<sup>28</sup> That the legislation also included controversial provisions and specifically provisions of the Trust bill is hardly surprising. The 104th Congress saw a frontal assault on America's federal lands, led by westerners in the House, under the pretext of deficit reduction and government efficiency. The overall aim of this assault was nothing less than the dismantling of the public estate, by transferring as many as possible of our public lands to the states and private interests.<sup>29</sup> Far more ambitious than the "privatization" scheme of the Reagan era, which sought to sell off "only" about five percent of the public's lands in total,<sup>30</sup> bills in the 104th Congress sought to put hundreds of millions of acres on the block. These bills formed the backdrop against which the Presidio Trust legislation was debated and ultimately enacted and against which the legislation must be judged.

The 104th Congress saw an unprecedented attack on America's public lands. To achieve the goal of dismantling the federal estate, members introduced a variety of legislative proposals including bills to (1) sell the public lands outright to private interests; (2) give them away – typically to the states in which they were located; and (3) prevent federal managers from carrying out their management responsibilities through either the budget process or the more traditional legislative process.<sup>31</sup> Parks were not immune from these attacks; in fact, as discussed below, anti-public land forces in the Congress tried to pass legislation to liquidate the National Park System.

#### A. SELLING PUBLIC LANDS

Prior to the 104th Congress and following passage of the Gramm-Rudman-Hollings law, Congressional budget rules expressly prohibited the sale of federal assets to be "scored" – i.e.,

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28. See Omnibus Parks and Public Lands Management Act of 1996, Title 10, Subtitles A and B.

29. See JOHANNA H. WALD & S. YASSA, NATURAL RESOURCES DEFENSE COUNCIL, SELLING OUR HERITAGE – CONGRESSIONAL PLANS FOR AMERICA'S PUBLIC LANDS (1995).

30. See, e.g., Johanna H. Wald & Elizabeth H. Temkin, *The Sagebrush Rebellion: The West Against Itself – Again*, 2 J. ENVTL L. 187 (1982) (citing *Budget Contains Program to Sell 5 percent of Public Lands*, PUBLIC LAND NEWS, Feb. 18, 1982, at 2).

31. See generally, WALD & YASSA, *supra* note 29.

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counted – in the budget process for purposes of deficit reduction, in recognition of the fact that liquidation of national assets was not a sound or appropriate way to reduce the deficit.<sup>32</sup> The 104th Congress, however, departed radically from this prior practice early in its first session.

The House and Senate Budget Resolutions, passed in May 1995, authorized the sale of federal “assets” – national parks, national wildlife refuges, national forests and rangelands and any other federal properties – in order to generate income to balance the budget.<sup>33</sup> This “asset sale rule” would have allowed Congress to sell the nation’s lands to private commercial interests under the pretext of budget cutting.

Parks were not exempted from this new approach to balancing the budget. Indeed, the Fiscal Year 1996 budget envisioned by the Chairman of the Senate Budget Committee called for selling the Presidio outright over a period of three years.<sup>34</sup>

Proponents of selling the Presidio and other federal lands argued that the nation could not afford to maintain all of our parks and especially not those that were allegedly of only local or regional significance, rather than national importance. With its budget of \$25 million, the Presidio was – and is – the most expensive of all parks in the system.<sup>35</sup> Accordingly, it was a natural focus of their attack.

#### B. GIVING THE PUBLIC LANDS AWAY: TRANSFER, CLOSURE, AND COMMERCIALIZATION

In addition to promoting the sale of federal lands, the anti-federal land forces in the 104th Congress also promoted an outright – and massive – giveaway of these lands to the states. The giveaway plan was originally hatched by the Heritage

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32. See WALD & YASSA, *supra* note 29, at 4.

33. See S. CON. RES. 13, 104th Cong. (1995); H.R. Con. Res. 67, 104th Cong. (1995).

34. See STAFF OF SENATE COMMITTEE ON THE BUDGET, 104th Cong., FY 1996 BALANCED BUDGET RESOLUTION CHAIRMAN’S MARK (1995).

35. See, e.g., H.R. REP. NO. 104-234, at 7, 13 (1995). (“The greatest concern of the [House Resources] Committee has been the cost of the Presidio.”).

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Foundation, a conservative think tank, which recommended that the Congress “begin a five to seven year effort to give most of the land controlled by” the federal government to individual states.<sup>36</sup> To facilitate this shift, the Foundation recommended that the National Park Service, U.S. Forest Service, Bureau of Land Management, and Fish and Wildlife Service be drastically downsized and merged into a single Bureau of Natural Resources, and that the federal government then transfer “most of the land controlled by this [new] agency back [sic]<sup>37</sup> to the states.”<sup>38</sup>

Under the Heritage Foundation proposal, only a few select parks and wilderness areas would be kept by the federal government – that is, the “parks and wilderness areas deemed of national significance”<sup>39</sup> – although they never specified what that term meant or who would decide which parks and wildernesses qualified for retention. All other lands would be given to the states along with “full authority to manage the resources according to the values of the citizens of each state”<sup>40</sup> – including, presumably, the authority to privatize those resources – in other words, to sell them to commercial interests.

Although several bills were introduced to give entire land systems to the states in which they were located,<sup>41</sup> no bill targeted the entire park system for outright transfer – perhaps because even the most radical opponents of federal lands in Congress understood how politically explosive such a proposal

36. THE HERITAGE FOUNDATION, A STRATEGY TO CUT INTERIOR AND RELATED AGENCY SPENDING, A SPECIAL REPORT TO THE APPROPRIATION COMMITTEES 4 (1995) [hereinafter “HERITAGE FOUNDATION, A STRATEGY”].

37. Contrary to the rhetoric of many in and out of Congress, we cannot give the public lands “back” to the states, because the overwhelming majority of them, including those in the West, never belonged to the states in the first place. Rather, the federal government acting on behalf of all citizens, present and future, acquired the federal public lands through treaty, conquest or purchase. See WALD & YASSA, *supra* note 29, at 5, n. 14.

38. HERITAGE FOUNDATION, A STRATEGY, *supra* note 36, at 4.

39. *Id.*

40. *Id.*

41. See, e.g., S. 1031, 104th Cong., (1995), and its companion in the House, H.R. 2032, 104th Cong., (1995), which would have given to the states all lands and minerals under the jurisdiction of the Interior Department’s Bureau of Land Management – some 268 million acres located principally in the 11 western states and Alaska.

would be. One bill was introduced, however, to give the administration of all of the national parks in South Dakota to that state.

Based on a proposal by Governor Bill Janklow, Senate Bill 1185, the South Dakota National Parks Preservation Act, would have allowed South Dakota to be given the responsibility for maintaining, operating, and administering all national park units within its borders.<sup>42</sup> Janklow used the specter of closing parks due to lack of funding to suggest that the state was in the position of doing a better job.<sup>43</sup> In return for having its state bureaucracy manage the national parks, South Dakota would receive those parks' regular federal appropriation.<sup>44</sup> South Dakota, whose state parks are managed with the goal of catalyzing development of its tourism economy, indicated it would manage national park resources the same way.<sup>45</sup> In addition, the state would be able to establish user fees to further offset costs.<sup>46</sup> On the whole, the bill sought to allow South Dakota to exploit national park resources for commercial gain, while ensuring it would receive a subsidy for the effort.<sup>47</sup>

There was in fact no need for the enactment of such a bill: the National Park Service was not planning to close down any parks due to lack of funding. Even more importantly, the bill was fundamentally incompatible with the principal reason why we have a National Park Service – i.e., to ensure uniform and consistent protection and preservation of our natural and cultural heritage. To apportion this responsibility among individ-

42. See S. 1185, 104th Cong., 1st Sess., § 2(b) (1995).

43. See Statement of Lori M. Nelson, Heartland Regional Director, The National Parks and Conservation Association, on Governor Janklow's South Dakota Proposal to Manage South Dakota's National Parks, September 17, 1995, at 2-3 [hereinafter "NPCA Statement on South Dakota Proposal"].

44. See S. 1185, 104th Cong., § 2(e) (1995).

45. See NPCA Statement on South Dakota Proposal, *supra* note 43, at 4.

46. See S. 1185, 104th Cong., 1st Sess., § 2(f) (1995).

47. In fact, as state and county governments are typically cash-poor, any transfers of management responsibilities for, or of title to, federal park or other lands would need to be accompanied by significant federal payments for operations and maintenance or the result would be park liquidation and/or commercialization. Indeed, during the first session of the 104th Congress, the California Department of Parks and Recreation was engaged in its own attempt, known as the Phoenix Plan, to transfer some state parks to city and county governments due to its lack of funds.

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ual states would not only require tremendous duplication of effort, it would also undermine the preservation mandate necessary to protect these treasures.

In addition to attempting to transfer large amounts of park lands out of the federal estate, park opponents in the 104th Congress tried very hard to close down those that they deemed “unnecessary” and “undeserving.”

Representatives Jim Hansen (R-UT), Joel Hefley (R-CO), and Don Young (R-AK) were among the members of the 104th Congress who championed a bill to create a Park Closure Commission patterned after the military base closure commission.<sup>48</sup> Their bill, House Bill 260, contemplated a wholesale reorganization of the National Park System.<sup>49</sup> A “National Park System Review Commission” would be established, with the mission of identifying national parks for possible closure and transfer to other authorities or for sale to the private sector. Members of the Commission would be appointed by the majority party of the House and Senate.<sup>50</sup> In addition, the bill exempted the park closure review process from the National Environmental Policy Act and specifically from the requirement that an environmental impact statement be prepared in connection with the selection of parks to be closed<sup>51</sup> — thereby denying members of the public the opportunity to participate in the process.

The views of House Bill 260’s supporters are illustrative of congressional anti-public land, anti-park attitudes. Representative Young has attacked national parks and wilderness areas for “locking up” valuable economic resources and has stated his belief that our national parks would be better managed by private contractors.<sup>52</sup> Representative Hansen has stated: “The

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48. See WALD & YASSA, *supra* note 29, at 8.

49. See *id.* See also letter from Congressman James V. Hansen to “Dear Utah Citizens” (December 8, 1994).

50. See H.R. 260, 104th Cong., § 103(a), (b) (1995).

51. See *id.* at § 104.

52. See, e.g., letter from Congressman Don Young to “Dear Colleague” (March 14, 1995).

question is not whether to close [national] parks, but how to accomplish this goal. . . .<sup>53</sup> On another occasion, Mr. Hansen opined that “[o]ne hundred and fifty parks of the some 368 need to be dropped.”<sup>54</sup> Representative Hefley, talking about House Bill 260, said: “None of the real parks — the legitimate parks are — are going away. But do we need a New Orleans Jazz Park? Some of those silly parks just don’t make sense.”<sup>55</sup> Representative John Doolittle (R-CA) has stated, “We should vastly shrink the size of Redwood National Park, transfer some to the county and sell the rest of it.”<sup>56</sup>

Moreover, a bill that clearly sought to commercialize the national parks, House Bill 3819/Senate Bill 1703, was introduced late in the 104th Congress. This legislative proposal would have allowed the sale of corporate “sponsorships” of the park system. Supporters claimed that its passage would provide much needed funds for the nation’s parks. Opponents pointed out that, at best, the bill would have raised less than three percent of estimated unmet park needs while tarnishing the fundamental idea of the National Park System.<sup>57</sup> In addition, it would have created an unavoidable conflict of interest on the part of Interior Secretaries that would compromise their ability to protect public lands in the future: the bill would have made them dependent on corporate sponsors for funds even as they were responsible for exercising broad regulatory authority over the activities of the same corporations on public lands.<sup>58</sup> Lastly, opponents feared that, in addition to providing little actual additional financing, the legislation could well have led

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53. THE AMICUS JOURNAL, Spring 1997, at 3 (an NRDC publication).

54. Don Bowman, *ESA Rewrite Dominated Western States Summit*, ELKO DAILY FREE PRESS, July 31, 1995.

55. \_\_\_\_\_, \_\_\_\_\_, DENVER POST, Feb. 13, 1995, at \_\_\_\_.

56. Frank Clifford & Mark Lacey, *Alaska Legislator Pushes to Loosen U.S. Grip on Lands*, L.A. TIMES, Mar. 18, 1995, at p.A1.

57. See NATIONAL RESOURCES DEFENSE COUNCIL, THE FINAL ASSAULT: ENVIRONMENTAL ATTACKS ON THE OMNIBUS PARKS BILL 13 (September 1996) [hereinafter “NRDC, THE FINAL ASSAULT”]. Supporters predicted the bill would raise \$100 million. At that time, estimated park needs were estimated to total \$4 billion. Since then, that estimate has been significantly increased. See, e.g., BUCCINO, *supra* note 2, at 12-14.

58. See NRDC, THE FINAL ASSAULT, *supra* note 57, at 13.

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to future Congresses offsetting the funds raised through sponsorship sales by decreases in appropriations.<sup>59</sup>

Attempts were made to add Senate Bill 1703 to the Omnibus Parks Bill, and for a while, its inclusion – along with a number of other environmentally destructive proposals – threatened to bring the whole parks bill down.<sup>60</sup>

### C. TYING AGENCY HANDS

The 104th Congress tried repeatedly and in different ways to tie the hands of federal land managers, particularly employees of the National Park Service, the U.S. Forest Service and the Bureau of Land Management, so that they could not manage the lands entrusted to them in an environmentally responsible manner. When it came to the Park Service, Congress' favorite way of accomplishing this goal was by wielding its budget ax.

The 104th Congress' original budget proposal contemplated drastic cuts in the Park Service's budget. The Interior Department estimated that the cuts proposed for Fiscal Year 1996 would have amounted to a thirty-six percent reduction in the National Park Service's budget over five years<sup>61</sup> and would have necessitated closure of numerous historic sites and several urban parks as well as the curtailment of visitor services and resource protection efforts in large Western wilderness parks.<sup>62</sup>

At the same time, and only a year after the creation of what was then the nation's newest park, Mojave National Preserve,

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59. See *id.*, pointing out that this had been congressional practice in the past under analogous circumstances.

60. See *id.* at 2-5. Previously, anti-wilderness forces in the 104th Congress had sought to secure the passage of a controversial Utah wilderness bill by attaching to it the Presidio Trust bill and the Sterling Forest bill. See Editorial, *Free the Presidio! Delink From Utah*, S.F. CHRONICLE, March 29, 1996, at p. A22; Editorial, *The Orrin Hatch Land Grab*, N.Y. TIMES, March 19, 1996, at p. \_\_\_\_.

61. See DEPARTMENT OF THE INTERIOR, NEWS RELEASE, STATEMENT OF INTERIOR SECRETARY BRUCE BABBITT RE: THE HOUSE BUDGET RESOLUTION (May 24, 1995).

62. See *id.*

opponents tried to use the budget process to close it.<sup>63</sup> On June 27, 1995, the House Appropriations Committee approved the Fiscal Year 1996 Interior Appropriations bill with language that would have prevented the National Park Service from managing the Preserve, by transferring management funds and personnel from the Park Service to the Bureau of Land Management ("BLM"), with instructions to manage the area under BLM standards, not Park standards.<sup>64</sup>

Although both of these attempts ultimately failed, it was not before the 104th Congress literally shut down the nation's parks along with other federal offices and programs in a highly publicized battle with the President over budget issues. At the height of that battle, the National Park System was closed for the first time in its eighty-year history, from December 16, 1995, to January 5, 1996.<sup>65</sup> In all, 367 parks were closed – all but two of the 369 units that then comprised the System.<sup>66</sup> Only 2,500 of the Park Service's 20,000 employees remained on duty, more than 383,000 visitors were turned away from parks each day of the twenty-one-day shutdown at a daily cost to the U.S. Treasury of \$104,000 in entrance fees, and local communities lost nearly \$14.2 million.<sup>67</sup>

63. See, e.g., NATIONAL RESOURCES DEFENSE COUNCIL, *THE YEAR OF LIVING DANGEROUSLY: CONGRESS AND THE ENVIRONMENT IN 1995* at 17 (1995).

64. See, e.g., NATIONAL PARKS AND CONSERVATION ASSOCIATION, *FACT SHEET: WAR ON THE NATIONAL PARKS IN THE 104TH CONGRESS 1* (1995). The BLM manages the federal lands under its jurisdiction, some 270 million acres, pursuant to the principles of multiple use and sustained yield. See Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701(a)(8), 1702(c), 1712(c) (1986). As a result, virtually all non-consumptive and economic uses, including livestock grazing, mineral production, and timber harvesting, are permitted on BLM-managed lands, along with recreational and non-economic activities. The National Park Service, in contrast, is charged with protecting parks from significant degradation so that future as well as present generations can enjoy them. See National Park Service Organic Act, 16 U.S.C. § 1 (1994). See also BUCCINO, *supra* note 2, at 2. Typically, consumptive and commodity uses are not allowed in parks, while hiking, camping and other recreational activities are.

65. See U.S. Department of the Interior, *Shutdown Closes National Park System*, 3 PEOPLE LAND & WATER 14 (February 1996). Under agreements with the States of Arizona and New Mexico, the south rim of Grand Canyon National Park and Carlsbad Caverns National Park stayed open during the shutdown and limited services were provided. See *id.*

66. See *id.*

67. See *id.* See also NATIONAL PARKS CONSERVATION ASSOCIATION, *THE ECONOMIC IMPORTANCE OF NATIONAL PARKS: EFFECTS OF THE 1995-1996 GOVERNMENT*



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### IV. THE PRESIDIO LEGISLATION: ITS WEAKNESSES AND ITS STRENGTHS

The anti-park agenda of members of the 104th Congress was conspicuous during the debates over the future of the Presidio and is reflected in the actual legislation establishing the Presidio Trust.

In its final form, the Presidio Trust legislation includes features which exemplify both the 104th Congress' attacks on parks and public lands and the resultant public outcry which prevented passage of those aggressive, draconian bills. While legislation which attempted to close parks or slash their funding represented a relatively easy target to organize against, even in the 104th Congress, the complexity of the Presidio's management needs, as well as that of the legislation crafted to address them, posed a far more difficult problem for the Park's advocates.

#### A. THE PRESIDIO REGIME IS FLAWED

The Presidio Trust legislation created a new management entity designed and established to manage the rehabilitation, restoration, and leasing of the park's historic properties. The Trust, which is managed by a seven member board composed of experts in the fields of finance, property management, conservation, and business,<sup>68</sup> is responsible for the development and implementation of a program to rent and manage the Presidio's now-vacant buildings.<sup>69</sup> To carry out this responsibility, the Trust has been granted broad authority to hire staff, negotiate contracts, and enter into joint powers agreements.<sup>70</sup> It is also empowered to guarantee loans and issue obligations to the Secretary of the Treasury.<sup>71</sup>

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SHUTDOWNS ON SELECTED PARK-DEPENDENT BUSINESSES AND COMMUNITIES (1996) [hereinafter "NPCA, THE ECONOMIC IMPORTANCE OF NATIONAL PARKS"].

68. See 16 U.S.C. §§ 103(c)(1)(A)-(B) (1996).

69. See 16 U.S.C. § 104(a).

70. See 16 U.S.C. §§ 103(c)(7), 104(b).

71. See 16 U.S.C. § 104(d).

Structured as “a wholly owned government corporation,”<sup>72</sup> the Trust and its board are independent of the Interior Department and the Executive Branch,<sup>73</sup> and subject to minimal public scrutiny.<sup>74</sup> Instead, Congress made the Trust subject to its authority and oversight. Accountability is to be achieved through annual reports and goal statements that are to be delivered to the House Committee on Resources and the Senate Committee on Energy and Natural Resources.<sup>75</sup> Further, Congress directed the General Accounting Office to study and report on the Trust’s progress in meeting the obligations outlined in the law and established a schedule for publication of the required reports.<sup>76</sup> These reports are to be addressed to the Senate Committees on Energy and Natural Resources and on Appropriations as well as to the Resources and Appropriations Committees of the House of Representatives.<sup>77</sup>

Although these provisions are problematic,<sup>78</sup> they are not the most problematic provisions of the legislation. That distinction goes to still other provisions of the law – those that deal with funding the park and the so-called “reversion clause.”

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72. See 16 U.S.C. § 103(c)(10).

73. Under the original version of the Presidio legislation, the Trust was under the jurisdiction of the Interior Department. In explaining why the Trust “would be an independent government corporation,” the Report on the House bill from the Committee on Resources, stated that “[t]he Committee is convinced that separation of the Trust from the Interior Department will result in an overall cost-savings to the government and increase the financial viability of the Trust.” H.R. REP. NO. 104-234, at 9 (1995).

74. The Trust is required to hold only two open public meetings per year. See 16 U.S.C. § 103(c)(6) (1996). In addition, it is not required to provide information directly to members of the public or to receive comments directly from the public. See *id.* Rather, it is authorized to deal with the public “through the Golden Gate National Recreation Area Advisory Commission,” *id.*, and it decided to do so at its first public meeting.

75. See 16 U.S.C. § 103(c)(10)(B) (1996).

76. See 16 U.S.C. § 106.

77. See *id.*

78. For example, supporters of the trust concept strongly urged that the Presidio Trust be under the jurisdiction of the Department of the Interior to ensure accountability as well as to maximize public involvement in its decision-making. See, e.g., letter from Johanna H. Wald and Ann Notthoff, National Resources Defense Council, to the Honorable Ben Nighthorse Campbell, Chairman, Subcommittee on Parks, Historic Preservation and Recreation (Dec. 6, 1995) (on file in NRDC’s San Francisco office).

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In enacting the Presidio Trust legislation, Congress found that the Trust is the vehicle by which the Presidio “will be managed through an innovative public/private partnership that minimizes cost to the United States Treasury and makes efficient use of private sector resources.”<sup>79</sup> With this seventh, and last, finding of the Trust bill, Congress laid the foundation for the most far-reaching and unprecedented features of this far-from-ordinary national park legislation.

The anti-park forces in Congress were pulled up short in their effort to cut spending on parks. However, if they could not spend any less on parks, they certainly were not going to spend any more – and especially not in California, which had recently benefited from the California Desert Protection Act. The cost of maintaining the Presidio was, first and last, the largest hurdle the park and its supporters had to overcome. No matter that the Sixth Army spent over \$70 million per year during its occupation of the Presidio.<sup>80</sup> The National Park Service’s bare bones budget of \$25 million was simply unacceptable.<sup>81</sup> To ensure that far less than that amount would be spent on the Presidio, Congress imposed real restrictions on future appropriations in the Trust legislation.

Specifically, the law requires that, following submittal of a fifteen-year business plan to Congress, appropriations to the Trust will be restricted to the amounts specified in the plan.<sup>82</sup> In addition, the law also requires the business plan to “include[ ] a schedule of annual decreasing federally appropriated funding. . . .”<sup>83</sup> Finally, the law specifies that, following the fifteenth year of its existence, the Trust will receive no further appropriations.<sup>84</sup> Not only must the Trust “minimize cost to

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79. 16 U.S.C. § 101(7).

80. See FEDERAL BUDGET, FY 1993.

81. The House Resources Committee referred to the \$25 million cost as “unrealistic” and expressed the view that “development of a reasonable [fiscal] program [for the Park] is essential.” H.R. REP. NO. 104-234, at 11 (1995).

82. See 16 U.S.C. § 105(a)(2)(1994). The business plan must be submitted to Congress one year after the Trust’s first meeting. See 16 U.S.C. § 105(b) (1994).

83. *Id.*

84. See *id.*

the United States Treasury,” but also, after fifteen years, it cannot be a burden at all.

By these restrictions, the 104th Congress, thwarted in its attempt to unencumber the Treasury from the responsibility of supporting our national parks, adroitly shifted responsibility for the Presidio to a new governmental entity. Although they were unable to give it to an established governmental entity such as the City of San Francisco, they created a new one and gave it a wholly new mandate – that it “achieve, at a minimum, self-sufficiency. . .within 15. . .years.”<sup>85</sup>

The 104th Congress also specified what was to happen in the event that the Trust failed to attain self-sufficiency within the required time period, notwithstanding the gradual reduction in appropriations, the cutting off of all funds after fifteen years, and the diligent scrutiny of Congress. The obvious outcome in this event – at least in past Congresses – would have been to return its governance to the National Park Service. The 104th Congress, however, refused to entertain this option for the Presidio: not only was it unwilling to appropriate funds for the management of “ordinary” park units, it did not believe that the Park Service was capable of dealing with the unique management problems posed by this far-from-ordinary park.<sup>86</sup> Congress had, after all, removed the Trust and the lands it would administer from the jurisdiction of the Secretary of the Interior. If the Trust, which was specifically designed to address the situation at the Presidio, was not up to the task, then Congress was certainly not going to give the Park Service the chance to try.

Instead, Congress provided a simple and unequivocal directive in the event that the Trust failed to meet its mandate: Sell the Presidio. The legislation’s controversial “reversion” clause provides that, if the Trust fails after fifteen years to meet its obligations, all properties under its jurisdiction “shall be transferred” to the General Services Administration for disposal in accordance with the provisions of the Defense Authorization

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85. *Id.*

86. See H.R. REP. NO. 104-234, at 10 (1995).

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Act of 1990, which in turn provide for sale or transfer out of federal ownership.<sup>87</sup> The legislation goes on to specify that “any real property so transferred [shall] be deleted from the Golden Gate National Recreation Area.”<sup>88</sup>

#### B. THE PRESIDIO LEGISLATION COULD HAVE BEEN WORSE

The anti-park forces in the 104th Congress were nothing if not persistent. Frustrated at not moving a single item on their agenda, they clearly extracted a high price for passage of what was to be the only park bill enacted during that session. Fortunately for the Presidio, they were not the only persistent legislators working the bill. Representative Nancy Pelosi (D-San Francisco) proved to be a worthy adversary in this test of wills.

For every damaging provision that anti-park legislators demanded, Representative Pelosi made sure that language providing protection for the Park was also in place, starting with the findings themselves. In this section, Congress was forced to acknowledge the tremendous significance of the Presidio’s resources calling it “one of America’s great natural and historic sites.”<sup>89</sup> The Presidio’s inclusion within the boundary of Golden Gate National Recreation Area was preserved.<sup>90</sup> Moreover, the legislation requires that park resources be managed in such a way as to “protect[ ] the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area and cultural and recreational resources.”<sup>91</sup>

Despite the removal of the Trust from the jurisdiction of the Interior Department, Representative Pelosi assured it would have a close relationship with the Park Service and the Secretary of the Interior. First, as indicated above, the law requires that the Secretary of the Interior, or his or her designee, be a

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87. See 16 U.S.C. § 104(o).

88. *Id.*

89. 16 U.S.C. § 101(1).

90. See 16 U.S.C. § 101(5).

91. *Id.*

member of the Trust Board.<sup>92</sup> This and other membership requirements of the Board are intended to help establish strong resource protection representation among the individuals responsible for the Presidio's fate. Second, the law provides that, for purposes of carrying out its mandate, the Trust is to be considered a successor in interest to the Park Service with respect to compliance to the National Environmental Policy Act and all other environmental laws as well as National Historic Preservation Acts.<sup>93</sup> In effect, the Trust must follow all of the same statutes that govern the Park Service in its administration of other parks and must include the public in its decision making. In addition, the Trust must work closely with the Interior Department and the Park Service in a number of key areas.

The Trust is, for example, required to comply with GGNRA park "purposes" and with "the general objectives of the General Management Plan" for the Presidio.<sup>94</sup> It must consult with the Secretary of the Interior in preparing its management program as well as in developing its rules and regulations.<sup>95</sup> The Trust, too, is responsible for cooperating with the Park Service to assure visitor access, interpretation and educational programs in lands it administers.<sup>96</sup> Finally, Representative Pelosi sought to protect the lands that were not specifically related to real estate management, but were nonetheless administratively transferred to the Trust - i.e. open space lands and the Presidio's historic forest.

Specifically, the law requires the Trust to maintain at least the current amount of open space at the Presidio and prohibits it from disposing of or conveying fee title to any real property under its administration.<sup>97</sup> Additionally, the Trust is encouraged to transfer administration back to the Secretary of the Interior, of any lands which are not needed by it and which have high public use potential.<sup>98</sup> In its original form, the Trust

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92. See 16 U.S.C. § 103(c)(1)(A).

93. See 16 U.S.C. § 104(c).

94. 16 U.S.C. § 104(a).

95. See 16 U.S.C. § 104(c), (j).

96. See 16 U.S.C. § 102(b).

97. See 16 U.S.C. § 104(b).

98. See 16 U.S.C. § 105(b).

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legislation provided only for transfer of buildings to the trust, as these were the marketable resource. The 104th Congress, however, sought – and obtained – a much larger transfer.<sup>99</sup> It seems likely that, as open space has little rental value and requires management, the Trust will move quickly to place these lands back under the jurisdiction of the agency that clearly can protect and manage them.

These provisions, however, cannot and do not transform the Presidio Trust legislation into a traditional park bill. It is patently the product of the 104th Congress. Its features represented the very best the anti-park forces could achieve in the face of the backlash their own over-reaching created. Although they could not sell the Presidio or give it away or deny it the funds needed for its management, they could and did give management of its historic buildings to a wholly new government entity, responsible to them and not to the Interior Department. In addition, they could and did require the Trust to achieve self-sufficiency within fifteen years, during which time appropriations would decline. And, last but by no means least, they could and did require that, if the goal of self-sufficiency is not met, the Park's lands be put on the block.

While it yet remains to be seen whether that draconian result will occur, even if the Trust does not achieve this goal, there is no question but that these provisions are unprecedented. No other park in the entire system is subject to even one of these requirements, let alone all of them – and none, including the Presidio, should be.

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99. As the House Report noted, the legislation transferred “administrative jurisdiction over about 80 percent of the lands at the Presidio from the Secretary to the Trust”. Although the area for which the Trust would be responsible “includes essentially all of the leasable building space,” it is more than “just buildings.” H.R. REP. NO. 104-234, at 9 (1995).

## V. WHY THE PRESIDIO TRUST MODEL IS NOT APPROPRIATE FOR OTHER PARKS

### A. COSTS AND BENEFITS OF OUR NATIONAL PARKS

For Fiscal Year 1997, the Park Service's budget amounted to \$1.4 billion, with which it had to maintain 375 parks and serve an estimated 276 million visitors.<sup>100</sup> Overall, the vast majority of the Service's budget comes from appropriated funds.<sup>101</sup> Although a small amount of revenue is generated through park entrance and permit fees, these funds only cover the costs associated with collecting those fees with the remainder going to the Treasury.<sup>102</sup> Although \$1.4 billion sounds like a large amount and, in point of fact, is more than the other land management agencies receive, in constant dollars, the Park Service's budget declined by \$635 million from 1978 to 1996.<sup>103</sup> At the same time, seventy-nine new parks have been created and the number of annual visitors has increased by almost 40 million.<sup>104</sup>

Although \$1.4 billion sounds like a lot, we spend a lot more on other programs than we do on our parks. For example, we spend \$3.2 billion on the federal prison system and \$22.3 billion on highway construction. We spend as much to subsidize corporate cotton growers as we do on parks.<sup>105</sup>

For this \$1.4 billion, Americans receive a park system that is the envy of the rest of the world – and, in fact, many of the visitors to our parks come from other countries. What is more, there is no better recreation deal in this country than touring the National Parks. Even with the recent increase of fees at Yellowstone, Yosemite and Grand Teton National Parks to \$20 per week, enjoyment of these unique areas is a bargain com-

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100. See BUCCINO, *supra* note 2, at 17.

101. See *id.*

102. A new fee program has allowed 100 of our most popular National Parks to retain 80% of specified fee increases to address backlogged maintenance projects on a three-year experimental basis. See Pub. L. No. 104-134 (1996).

103. See BUCCINO, *supra* note 2, at 17.

104. See *id.*

105. See *id.* at 21.



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pared to a visit to an amusement park for a day, a professional sporting event, or a professional performing arts production.

Our parks produce real benefits for visitors and others. They provide all who visit them with the opportunity to learn about how our ancestors lived and how America used to be. We cherish our parks because they keep our natural, cultural, and ecological history alive. They also provide significant economic benefits for those who work in them or whose businesses depend on them.<sup>106</sup> These myriad benefits are the reason why past Congresses – including even the 104th Congress – have seen fit to create new parks again and again since 1872, even as opponents claim that we have too many or they cost too much.

### B. WHAT IF OTHER PARKS WERE REQUIRED TO BE SELF-SUFFICIENT?

Many of those who oppose our national parks claim that they should be self-sufficient – that each park should raise the funds needed for its operation or else face being shut down. They strongly advocate “relying on park visitors, not Congress, for operating support” for all of our parks,<sup>107</sup> regardless of the sums involved, the resources preserved, and questions of equity or access by the poor.<sup>108</sup> Many advocates of self-sufficiency are likely to support the notion of exploiting park resources as a means of supporting park operations. As such, they can be expected to point to the Trust legislation as a model for other parks.

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106. According to the National Park Service, the national parks generate roughly \$10 billion a year in their surrounding economies. The Interior Department has estimated that communities surrounding the parks lost \$14 million in tourism sales *every day* that the parks were closed during the winter of 1995-96. NPCA, *THE ECONOMIC IMPORTANCE OF NATIONAL PARKS*, *supra* note 67, at Preface.

107. *See, e.g.*, DONALD R. LEAL & HOLLY LIPPKE FRETWELL, *BACK TO THE FUTURE TO SAVE OUR PARKS* (PERC Policy Series, Issue Number PS-10) (June 1997).

108. Polls indicate that people would be willing to pay more than they do now to visit parks, but would oppose efforts to raise fees on an across-the-board basis as well as at parks used heavily by those with limited means. *See, e.g.*, *AMERICAN VIEWS ON NATIONAL PARK ISSUES, A SUMMARY REPORT BY THE NATIONAL PARKS & CONSERVATION ASSOCIATION AND HUMAN DIMENSIONS IN NATIONAL RESOURCES UNIT*, COLORADO STATE UNIVERSITY (May 21, 1996).

As noted earlier, the Presidio's historic buildings are unique in that their preservation requires their use. That use can generate funds which directly benefit the resource. Moreover, because the Presidio has so many buildings and is so well situated, it is at least conceivable that rental income will suffice to cover management needs. The same cannot be said about the resources in other units of the National Park System. In other parks, using resources to generate operating funds would directly harm those resources and the parks within which they are located; it would also degrade the visitor experience. What is more, it is by no means clear that making use of the resources of these parks would generate significant sums of money, let alone the amounts that are needed.

First of all, many of the resources protected by our parks are not renewable. Take for example the geologic formations in Utah's Arches National Park. Once those formations are gone, they are gone forever. They cannot be recreated. "Using" such resources to generate operating funds would be inconsistent with the preservation ideal that is the fundamental premise of our national parks.

Some may argue that certain resources, while not renewable, are not even seen by visitors and should, therefore, be utilized. Gold and other minerals come to mind – along with images of the destruction that would result from an open pit gold mine in the heart of Mojave National Preserve, images that include piles of ore soaked in cyanide rising above the desert landscape along with the mountains of waste rock. Such a mine would not only be seen, it would also be heard. It would ruin the natural quiet of the Preserve and would forever alter its natural landscape.

The huge public outcry that arose at home and abroad when a massive gold mine was proposed just outside the border of Yellowstone National Park is evidence of just how controversial such a project would be. In addition, because such mines are governed by the Mining Law of 1872, they would generate nei-

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ther rents nor royalties for the federal government – so would contribute nothing to operating costs of the parks.<sup>109</sup>

Then there are the resources which have the capacity to regenerate on their own. The giant redwoods of California's Redwood State and National Parks are a good example. A salvage logging operation following a major storm or wildfire might seem to be a reasonable way to reap tremendous profits for the park which could then be used for other park protection projects. At least one state park – Custer State Park in South Dakota – allows timber harvesting to obtain operating funds<sup>110</sup> and has been hailed as a model for federal parks to emulate.<sup>111</sup> Yet the construction of logging roads, the impacts to endangered species, and the degradation of watersheds and rivers that would result make this, too, an untenable option for park funding.

Similarly, grazing exists in a number of park units, a vestige of our "traditional use" of public lands.<sup>112</sup> What would be the response to proposals for the return of domestic sheep to Yosemite's alpine meadows, or the elimination of bison *within* Yellowstone's borders to make way for the introduction of privately-owned cows? Already restive over the environmental

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109. Exploration for, and development of, gold, silver, copper and other so-called "hard rock" minerals on federal lands is governed by the Mining Law of 1872, 30 U.S.C. § 22 et seq. (1994). Under this law, any business or citizen can locate a claim on up to 20 acres of non-withdrawn or "open" public lands. See, e.g., COMMITTEE ON NATURAL RESOURCES, MAJORITY STAFF REPORT, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, TAKING FROM THE TAXPAYER: PUBLIC SUBSIDIES FOR NATURAL RESOURCE DEVELOPMENT at 14 (August 1994) (hereinafter "COMMITTEE ON NATURAL RESOURCES, TAKING FROM THE TAXPAYER"). It has been estimated that, overall, the National Park System contains over two thousand mining claims. See Todd Wilkinson, *Undermining the Parks*, NATIONAL PARKS, Jan./Feb. 1991, at 29. Minerals that are extracted from these claims are extracted free of charge. See COMMITTEE ON NATURAL RESOURCES, TAKING FROM THE TAXPAYER, *supra*, at 15.

110. See NPCA Statement on South Dakota Proposal, *supra* note 43.

111. See LEAL & FRETWELL, *supra* note 107, at 26-29. The authors, however, do not acknowledge that logging takes place in this park – or perhaps they do not know.

112. Currently livestock grazing is occurring in units such as Great Basin, Channel Islands, Gettysburg and Death Valley National Parks as well as in Point Reyes National Seashore and Mojave National Preserve. Grazing impacts on the Channel Islands have resulted in the listing of several endangered plant taxa, the imposition of a Clean up or Abatement Order for violations of the Clean Water Act, and a lawsuit by the National Parks and Conservation Association.

impacts of grazing in other parks and other federal lands, the public would find expansion of this activity in our national parks abhorrent. What is more, because federal grazing too is traditionally subsidized through, for example, imposition of below-cost, below-market grazing fees,<sup>113</sup> this use would be extremely unlikely to generate much in the way of funds.

To follow this line of reasoning to its extreme, we return to the Presidio. If buildings are the only reasonable means by which we can extract money from our national parks, why should we not build more of them? Historically, a swank development was planned for the Limantour Beach area of Point Reyes National Seashore. The plans for that subdivision still exist in a Park Service archive. Long-term leases of the houses of such a development could generate enough revenue to provide for the administration of Point Reyes and number of smaller parks.

But now we have come full circle. That proposed development was precisely the reason Congress chose to protect this unparalleled natural area in the first place.

The fact is our national parks have been set aside because they are worthy of preservation for present and future generations – and that is the mandate the Park Service has been given for their management.<sup>114</sup> To require them to earn their operating funds would necessarily mean the Park Service would have to stop managing for the long term and begin instead to look for short term resource management strategies that would maximize return – an approach that is fundamentally inconsistent with long term resource preservation. Parks benefit the nation – and the nation, through the U.S. Treasury, should provide for their operational needs.

Indeed, rather than continue to insist that the Presidio become self-sustaining or else, the legislation that established the Trust should be amended to ensure that this extraordinary site

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113. See FRIENDS OF THE EARTH, ET AL., GREEN SCISSORS 1997 – CUTTING WASTEFUL AND ENVIRONMENTALLY HARMFUL SPENDING AND SUBSIDIES 25 (1997).

114. See 1916 Organic Act, 16 U.S.C. § 1 (1994).

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with its remarkable resources will be protected and preserved for future generations to enjoy and appreciate.

### VI. HOW THE PRESIDIO TRUST LEGISLATION SHOULD BE CHANGED

By now it should be clear why the Presidio Trust legislation should be changed. The law takes unprecedented steps to remove the Presidio from National Park Service jurisdiction, limits, and eventually eliminates, appropriations to the park, and directs sale of the property should the Trust fail to achieve self-sufficiency by the specified date. Moreover, due to the political dynamics which created the legislation, we can assume that efforts will be made to apply this approach to other units of the National Park System. But, just as the 104th Congress found it could not muster support for sweeping change, proponents of an improved Presidio Trust should not expect wholesale change overnight.

In the near term, the language regulating the Trust is a danger to the preservation of the Presidio. In the long term, it has the potential to undermine the entire park system. Given congressional politics, prioritizing action to avert these threats is not only the logical strategy, it is essential.

The single greatest immediate threat to the Presidio's resources is the requirement that Trust operate self-sufficiently within fifteen years and the penalty if it does not. These two inextricably-linked provisions hang like the sword of Damocles over the Trust, and will necessarily influence its management decisions. For example, faced with the threat of sale, the Trust will be forced to seek out tenants who are able to pay the highest rents and have the flexibility to move quickly when leases are let. Disadvantaged in this scenario, or one could say discriminated against, will be nonprofit organizations and small businesses dedicated to finding solutions to environmental problems and creating sustainable economies.

Instead of the synergistic, future-oriented community envisioned in the park's General Management Plan,<sup>115</sup> the Presidio's buildings may simply be rented to a variety of businesses in order to achieve self-sufficiency and avoid sale.<sup>116</sup> Because a host of management decisions will be affected by the self-sufficiency mandate, even if the reversion clause were omitted, both features of the current law need to be eliminated.

As the legislation calls for decreasing appropriations over the course of the fifteen years, one could argue that this provision should be the next to be amended. Without the reversion clause, however, the threat of selling off the Presidio would no longer exist. The Trust would then have more latitude to follow the General Management Plan developed by the Park Service. While the Trust could potentially receive fewer federal dollars to work with, it is far less likely that it would fail outright. For this reason, as well as the potential for raising money through grants and private donations, the Presidio would be better served by an amendment that would bring the Trust back under the jurisdiction of the Secretary of the Interior, than by one which would address appropriations.

Amending the law to reincorporate the Presidio's real estate into the Golden Gate National Recreation Area and place the Trust under National Park Service Administration is the next step to assuring appropriate use of the historic buildings and the protection of the natural areas. The Trust would still have the responsibility for real estate management, a task most agree is beyond the Park Service's capability. The agency does, however, have the expertise as well as the mandate to preserve the Presidio's resources and to manage them consistent with the General Management Plan as well as to comply with all other applicable federal laws. Placing the Trust under the jurisdiction of the Park Service is the best way of ensuring that

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115. See NPS, FINAL PRESIDIO GENERAL PLAN AMENDMENT, *supra* note 10, at v (A *Vision for the Presidio*).

116. This is not to say that the author believes there is any realistic possibility that a high-rise mall will be built on Presidio grounds, as some opponents of the legislation fear. See, e.g., Angela Alioto, *The Presidio Land Grab*, SACRAMENTO BEE, Apr. 20, 1997.

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the preservation mandate is met for all resources – both natural and historic – at the Presidio.

With these three modifications, restrictions which would either result in the loss of the Presidio outright or significantly alter the park's mission would be removed. As opportunities arise, whether by a change in political leadership or public demand, further amendments could be offered to increase appropriations, remove the language mandating a maximum return on the real estate, and correct other flaws in the law.

### VII. CONCLUSION

If the Presidio's vast panoply of cultural and natural resources are what establishes the park as unique among units of the National Park System, its management by the Presidio Trust only sets it further apart. From the beginning, when the Presidio made the transition from post to park, its proximity to a large urban area, the cost of its maintenance, and the desirability of its real estate, all conspired to bring attention and scrutiny from leaders of the 104th Congress in need of fodder for their anti-park agenda.

In many respects, that Congress successfully manipulated the Presidio's uniqueness against itself and, ultimately, the entire system. Having failed in a wholesale attempt to liquidate our national parks, Congress made history by transferring the Presidio's management out of the National Park Service – and future Congresses may well attempt to build on this success.

If history is any guide, the Presidio Trust is likely to be seen as a "bold" and "daring" model by many in the Congressional debates to come. Therefore, amending the Presidio Trust legislation to bring it more in line with traditional Park Service management is imperative. Correcting the anti-park provisions of the law will not only help retain the unique resources of the Presidio, it will also help defend the integrity of our entire system of national parks now and in the future.