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ARTICLE

THE PATH OF THE PRESIDIO TRUST LEGISLATION

BY DONALD J. HELLMANN*

I. INTRODUCTION

At 10:18 on the morning of November 12, 1996, the vice president, several senators and representatives, and interior department officials wedged themselves into the Oval Office as President Clinton began the brief ceremony to sign into law the Omnibus Parks and Public Lands Management Act of 1996.¹ Title I of division I of this multi-titled act authorized the creation of the Presidio Trust, a government corporation² charged

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1. See Remarks on Signing the Omnibus Parks and Public Lands Management Act of 1996 and an Exchange With Reporters, 32 Weekly Comp. Pres. Doc. No. 46, p. 2379 (Nov. 12, 1996) [hereinafter "Remarks on Signing"].

2. See Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333, 110 Stat. 4093, 4098, 4100, 16 U.S.C. § 460bb note (1996) [hereinafter "Omnibus Parks Act"]. Section 103(a) of division I of this act creates the Presidio Trust as a wholly owned government corporation, while Section 103(c)(10) states that the trust will be treated as a government corporation subject to chapter 91 of title 31, United States Code, commonly referred to as the Government Corporation Control Act (GCCA). The GCCA does not provide a definition of a wholly owned government corpo-

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with the responsibility for managing 80 percent of the Presidio of San Francisco.³

The president spoke of the significance of this legislation that created a nonprofit trust to assure the preservation of the Presidio's historical and natural resources. He thanked Senators Barbara Boxer (D-CA) and Dianne Feinstein (D-CA), along with Representative Nancy Pelosi (D-CA) for their efforts to pass this legislation.⁴ None of the questions from the press following the ceremony concerned the just-signed bill.⁵ The program ended shortly thereafter and had much less fanfare than had originally been planned.⁶

Creating the Presidio Trust and enacting the other land protection measures in the Omnibus Parks Act had not been simple. The park service had originally envisioned in the general management plan for the Presidio that a partnership institution would be created to assist the National Park Service with management of the area. The park service's partnership idea would be changed substantially when the trust legislation emerged from Congress. This article will examine how the Presidio first became part of the National Park System, the

ration, but generally "it is an agency of government, established by Congress to perform a public purpose, which provides a market-oriented service and produces revenue that meets or approximates its expenditures." Congressional Research Service, Library of Congress, by Ronald C. Moe, 104th Cong., *Managing the Public's Business: Federal Government Corporations*, at ix, Prepared for the Committee on Governmental Affairs, United States Senate, (S. Prt. 104-18, April, 1995).

3. See Omnibus Parks Act, *supra*, note 2. There were 116 sections in the Omnibus Parks Act, the remainder of which concerned national parks, forests, trails, rivers, and other public lands in forty-one states. See *id.*

4. See Remarks on Signing, *supra* note 1.

5. See *id.* at 2380-82.

6. Some political maneuvering had spoiled a plan being considered to celebrate the president's signing of the Omnibus Parks Act in one of the states affected by the legislation. New Jersey, one of the states where Sterling Forest is located, and California, the home of the Presidio, were being considered for a signing ceremony. While the bill had passed Congress on October 5 and had been enrolled for the president's signature, Democrats had charged it was not being transmitted to the president by the Republicans in Congress until after the November election so he would not receive credit for its passage. See Press Release of Congressman George Miller, Oct. 25, 1996. As it was, the bill was sent to the president for his signature on election day and it was the last bill passed by the 104th Congress to be signed into law. See *Calendars of the United States House of Representatives and History of Legislation*, 8-56, 6-4 (Final Ed.).

efforts undertaken to provide the park service with the authority needed to manage the area, and the controversies and compromises that surrounded the enactment of the Presidio Trust legislation.

II. HISTORY AND RESOURCES OF THE PRESIDIO

The Presidio's use as a military garrison was established in 1776 under the government of Spain. The garrison represented Spain's claim to this territory at its northernmost point in the New World and was used for a number of military and exploratory expeditions.⁷ When Mexico took it over in 1822, the Presidio's military importance diminished as troops left for civilian life.⁸ The Presidio changed hands again when the United States captured it during the war with Mexico. While the U.S. government established Fort Point⁹ to protect the harbor at San Francisco, the main part of the Presidio would not come to prominence until the Civil War, when the 9th U.S. Infantry Regiment was headquartered there.¹⁰

After the Civil War, the Presidio contributed to the settlement of the west and became a point from which troops were deployed in conflicts with the Indians.¹¹ Near the end of the century, the post assumed importance in the country's movement toward becoming an international power and provided a staging area for troops fighting in the Spanish-American War.¹² During both World War I and II, the Presidio was a training and mobilization area for troops being sent overseas.¹³ One of

7. See STEPHEN A. HALLER, *POST AND PARK: A BRIEF ILLUSTRATED HISTORY OF THE PRESIDIO OF SAN FRANCISCO* 3 (San Francisco: Golden Gate National Parks Association 1997).

8. See *id.*

9. Fort Point, while located within the exterior boundaries of the Presidio, was established by Congress in 1970 as a national historic site consisting of twenty-nine acres on the tip of San Francisco Bay. It was designated a separate unit of the National Park System two years prior to the creation of Golden Gate National Recreation Area by the Act of October 16, 1970, Pub. L. No. 91-457, 84 Stat. 970, 16 U.S.C. § 461 note. It remains a separate unit of the park system today.

10. See HALLER, *supra* note 7, at 4-5.

11. See *id.* at 5.

12. See *id.* at 7-8.

13. See *id.* at 8-11.

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the Presidio's largest structures, the Letterman Army Hospital, was used to treat the wounded — a role that would be repeated during the Korean and Vietnam wars.¹⁴

It was not just its military past, however, that defined the Presidio's uniqueness. Situated on the beautiful San Francisco Bay, the views commanded from this site are some of the best in the city. A forest planted over 100 years ago contributes to the park-like setting.¹⁵ Ten rare plant communities along with various riparian and wetland areas are found on the grounds and help provide wildlife habitat.¹⁶ The Presidio offers excellent recreational opportunities enjoyed by hikers, bicyclists, joggers, windsurfers, and sailors. Additionally, some of the former military recreational facilities are available to the public, including the gymnasium, swimming pool, and the Presidio golf course.¹⁷

The military significance of the Presidio, with its architecturally important buildings and structures, led to its designation in 1972 as a national historic landmark.¹⁸ The unique environment of this area and its significance to the city and to the nation, all contributed to the effort to protect the Presidio as part of the National Park System.¹⁹

14. See DELPHINE HIRASUNA, *PRESIDIO GATEWAYS, VIEWS OF A NATIONAL LANDMARK AT SAN FRANCISCO'S GOLDEN GATE 14* (San Francisco: Golden Gate National Parks Association, 1994).

15. Creating a Park for the 21st Century from military post to national park, Final General Management Plan Amendment, Presidio of San Francisco, Golden Gate National Recreation Area, California, July 1994, p. 7 [hereinafter "FGMPA"]. The forest was planted as an Army beautification project and the forest can still be seen at various places throughout the Presidio.

16. See *id.* at 9. The plant communities include serpentine grasslands, the last dune communities that were once found in almost half of the city, and a rare plant, the Raven's Manzanita, which the park service was able to save from extinction through its plant propagation program.

17. See *id.*

18. See *id.* at 7.

19. Today there are 1,480 acres of land that constitute the Presidio, located at the foot of the Golden Gate Bridge in San Francisco. Within the area, 700 acres contain development and the rest is open space. There are 870 buildings with about 6.3 million square feet of space, and over half of the buildings are historic.

III. THE PRESIDIO AND THE NATIONAL PARK SYSTEM

The Presidio's relationship with the National Park Service began a couple of decades before the trust legislation became law, when Congress mandated the protection of its natural resources and restricted the military's use of the area. This effort began during the Nixon Administration when Secretary of the Interior Walter Hickel promoted a "parks to the people" plan.²⁰ In 1972, this urban park initiative resulted in the establishment of Golden Gate National Recreation Area ("GGNRA") in San Francisco.²¹ GGNRA originally was created to preserve a collection of park lands and historic sites extending from the coastal areas of San Francisco north through Marin County to Point Reyes National Seashore.²² It later grew as other properties in San Francisco and throughout Marin County were added by Congress in the late 70's and early 80's. The recreation area was also extended south by including the watershed lands in San Mateo County.²³

20. For a discussion of this effort see JOHN JACOBS, *A RAGE FOR JUSTICE* 210-216 (Berkeley: University of California Press, 1995). The idea for this park actually began with Ansel Adams in the 1950's with his plan to preserve the Marin Headlands and other surplus military land around San Francisco Bay. This only became a reality, however, when President Nixon was angered about the occupation of Alcatraz by Native Americans and Secretary Hickel thought he could move them off by transforming the island into part of a national recreation area. It was soon after that Representative Phil Burton introduced his legislation to create Golden Gate National Recreation Area, but the bill included a provision to give Alcatraz to the Indians for twenty-four dollars.

21. See The Act of October 27, 1972, Pub. L. No. 92-589, 92d Cong., 86 Stat. 1299, 16 U.S.C. § 460bb (1994).

22. See H.R. REP. NO. 92-1391. (1972), *reprinted in* 1972 U.S.C.C.A.N. 4850, 4851.

23. There have been seven boundary adjustments to GGNRA since it was created. Additional properties in Marin County as well as the Haslett Warehouse in San Francisco were added by Pub. L. No. 93-544 of December 26, 1974. Pub. L. No. 95-625 of November 10, 1978, made further revisions to the boundary to include lands in Marin County and San Francisco. Samuel Taylor State Park and other state and private lands near Tomales Bay were added by Pub. L. No. 96-199 of March 5, 1980. More Marin County lands were added by Pub. L. No. 96-344 of September 8, 1980. Later that year, on December 28, 1980, Pub. L. No. 96-607 added Sweeney Ridge in San Mateo County, along with a requirement that the National Park Service administer the San Francisco water department property, and Pillar Point Military Reservation, whenever the reservation was declared surplus. Pub. L. No. 100-348, of June 27, 1988, further revised the boundary to exclude lands comprising San Francisco Maritime National Historical Park, which became a separate unit of the National Park System. Pub. L. No. 102-299 of June 9, 1992, authorized the addition of the 1,232-acre Phleger Estate in San Mateo County to GGNRA.

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The legislation creating the GGNRA required the secretary of the army to grant to the secretary of the interior an irrevocable use and occupancy for portions of Baker Beach and Crissy Army Airfield in the Presidio. Another provision said that "when all or any substantial portion of the remainder of the Presidio is determined by the Department of Defense to be excess to its needs, such lands shall be transferred to the jurisdiction of the Secretary [of the Interior] for the purposes of this Act."²⁴ This provision resulted from the work of the late U.S. representative from San Francisco, Phil Burton. His foresight guaranteed the future protection of some of the best undeveloped land in the area.²⁵

Representative Burton extended this protection by adding another section to the GGNRA legislation that limited new construction and development on property remaining under the Department of the Army's jurisdiction and that required consultation with the secretary of the interior for any construction on undeveloped open space.²⁶ While the military objected to these provisions, they remained in the law.²⁷

Six years later, the National Parks and Recreation Act of 1978 further restricted the military's use of the Presidio by prohibiting them from building anything new on the Presidio. While the army could reconstruct or demolish existing structures, the replacement building had to be of similar size and it could only be replaced with the approval of the secretary of the interior, who was required to first conduct a public hearing.²⁸ This provision was added by Representative Burton to ensure

24. The Act of October 27, 1972, Pub. L. No. 92-589, 92d Cong., 86 Stat. 1300 (1972).

25. See JACOBS, *supra* note 20.

26. See The Act of October 27, 1972, *supra* note 21, 86 Stat. 1301.

27. See JACOBS, *supra* note 20. The military continued to oppose creation of the national recreation area and sent military officials to Capitol Hill to lobby against it. Even with the support of the chairman of the House Armed Services Committee, the military was unable to stop the speaker from scheduling the bill for floor debate or its passage by the House and Senate.

28. See National Parks and Recreation Act of 1978, Pub. L. No. 98-625, 92 Stat. 3467, 3485, 16 U.S.C. § 460bb-2 (1978).

the Presidio would retain existing open space that was free of development.²⁹

These actions were the precursor to those that would be taken years later when the Presidio Trust was created. When congressional consideration of the trust bill began, the National Park Service was already managing Baker Beach, part of Crissy Field, and the Fort Point National Historic Site at the Presidio.

IV. FROM MILITARY BASE TO PARK

In response to efforts by Congress to downsize the military and to help reduce the budget deficit, the Presidio's use as a military base would be ended. While some 500 bases were closed in the early 1970's, further shutdowns were stopped as members of Congress tried to protect their communities from the resulting job losses.³⁰ While the Presidio survived the 1970's downsizing, in the late 1980's, Congress turned to the creation of an independent commission that would recommend a list of additional bases to be closed. The commission was required to submit its recommendations by December 31, 1988, and the secretary of defense had until January 16, 1989, to approve the list. Congress could only then vote to accept or reject the entire list.³¹ As a result of this effort, the Defense Secretary's Commission on Base Realignment and Closure recommended the closing of eighty-six military bases, including the Presidio.³²

29. See JACOBS, *supra* note 20, at 367.

30. See *Bill Enacted to Close Obsolete Military Bases*, Congressional Quarterly Almanac, 100th Cong., 441 (1988), Vol. XLIV (Washington, D.C.: Congressional Quarterly, Inc. 1989), [hereinafter *Bill Enacted*].

31. See Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. No. 100-526, 102 Stat. 2623, 2627-34, 10 U.S.C. § 2687.

32. See *Bill Enacted*, *supra* note 30, at 447. At the time, the closing of the Presidio was opposed by Senator Barbara Boxer and Representative Nancy Pelosi as they said there would be little savings to the government since the property was slated to be given to the interior department under the GGNRA law. See *Bill Enacted*, *supra* note 30, at 449.

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After the base closing law was enacted, an interagency agreement was signed between the Department of Defense and the National Park Service to implement the transfer that had been required by the legislation creating GGNRA.³³ Additionally, a provision was attached to an unrelated bill in October of 1992 authorizing the secretary of defense to offer technical assistance on infrastructure repairs and improvements during the transition period before the park service took over the Presidio.³⁴ On October 1, 1994, the National Park Service officially assumed responsibility for management of the Presidio from the army.³⁵

Long before the formal transfer took place, a planning process was begun in the National Park Service to determine the future of the Presidio as part of the Golden Gate National Recreation Area. The park service recognized that by investing in a careful planning process, it could assure a smooth transition.³⁶ The process began in the spring of 1990 with a series of meetings where the public was asked for their suggestions about the Presidio's future.³⁷ There was a great deal of participation due to the wide interest from the local community.³⁸ It continued throughout 1991-1993 with technical work-

33. See Agreement Between Department of the Army and Department of the Interior Regarding Future Uses of the Presidio of San Francisco, Sept. 14, 1990.

34. See Water Resources Development Act of 1992, Pub. L. No. 102-580, 106 Stat. 4860, 33 U.S.C. § 2201 note.

35. See Transmittal letter from Secretary of the Army Togo D. West, Jr., to Secretary of the Interior Bruce Babbitt and accompanying two letters (Sept. 30, 1994). (Letters on file with the author). These letters transferred the Presidio of San Francisco to the National Park Service. The transfer was made with the understanding that an irrevocable special use permit would be issued by the Department of the Interior, effective on October 1, 1994, to allow the army to use and occupy portions of the Presidio, subject to terms and conditions of an interagency agreement which was pending.

36. See telephone interview with Carey Feierabend, chief of planning and professional services, Presidio Project, formerly historical architect, Presidio Planning Team, Denver Service Center (August 22, 1997, Washington, D.C.) [hereinafter Interview with Feierabend].

37. See FGMPA, *supra* note 15, at 6. For a summary of the public involvement with the planning process, see FGMPA, Appendix C., at 124-126.

38. See Interview with Feierabend, *supra* note 36.

shops looking at specific issues such as resource management, transportation, and housing.³⁹

Interest from organizations proposing programs at the Presidio was solicited to help with the planning effort. A draft plan and environmental impact statement was circulated in the fall of 1993. After further hearings and the consideration of written and oral comments provided by the public, the Final General Management Plan Amendment ("FGMPA") and environmental impact statement were released in July, 1994, which became the road map for determining the management of the area and the appropriate uses of its property in the future.⁴⁰

The plan envisioned for the Presidio called for a unique urban national park. While traditional park activities would be provided, including recreation and a place to enjoy cultural, natural, and scenic resources, the plan also foresaw the use of the area as a global center to expand knowledge about our world.⁴¹ A conference center would be created, along with other research and educational programs.⁴² Management would be provided by the National Park Service with the help of a federally chartered institution with expertise in financing and the leasing of buildings. Along with the financial contribution provided by the army, tenants occupying buildings would help with capital investments and various programs at the site.⁴³

The idea for the partnership institution came in part from ten models the park service examined in various parts of the country as well as the success the park service had at Fort Mason in GGNRA — an area with a number of usable buildings beyond the needs of the park service, which were being managed by the Fort Mason Foundation, a non-profit group.⁴⁴ However, the recommendations of the Presidio Council, a group

39. *See id.*

40. *See FGMPA, supra note 15, at 4, 6.*

41. *See id.* at 20-21.

42. *See id.* at 123.

43. *See id.* at 21-22.

44. *See* telephone interview with Don Neubacher, superintendent of Point Reyes National Seashore, California, formerly supervisory planner and team captain, Presidio Planning Team, Denver Service Center (Sept. 10, 1997, Washington, D.C.).

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of respected citizens brought together by the Golden Gate National Park Association in 1991 to help plan for the conversion of the Presidio, proved more influential. The council obtained \$2.5 million in services of various financial and management experts and their analysis resulted in the trust concept.⁴⁵ The trust recommendation was based upon a belief that the park service was not up to the task of managing such a complex undertaking by itself.⁴⁶

In 1993, the Defense Secretary's Commission on Base Realignments and Closures amended its original decision to close the Presidio by allowing the Sixth U.S. Army headquarters to remain at the base.⁴⁷ This decision was supported by the secretary of the interior⁴⁸ and led the park service to reconsider parts of its plan in the middle of the process to account for the army's decision to stay.⁴⁹ Consequently, the final general management plan recommended actions for the army's use and occupancy of several buildings.⁵⁰

The army's continued presence was viewed as helping to preserve the long-standing military tradition at the Presidio and as helping to "enhance the Presidio's economic viability in

45. See 140 CONG. REC. NO. 117 H8641-43 (daily ed. Aug. 18, 1994) (statement of Representative Pelosi).

46. See interview with Robert Chandler, former general manager, Presidio of San Francisco, National Park Service (July 25, 1997, Washington, D.C.) [hereinafter Interview with Chandler].

47. See FGMPA, *supra*, note 15, at 17. Perhaps as a way to provide some insurance during negotiations with the park service over which buildings the army could continue to occupy, section 2856 was added in the House/Senate conference on the National Defense Authorization Act for FY 1994, Pub. L. No. 103-160, 107 Stat. 1908, that prohibited the secretary of defense from transferring any parcel of real property at the Presidio to the Department of the Interior until it was determined to be excess to the needs of the army and a report was submitted to Congress showing the terms of the transfer. During debate on the conference report, Representative Pelosi, Senator Boxer, and Senator Feinstein went to the House and Senate floors, respectively, to state their views that this provision was a mere reiteration of current law and would not stop the transfer of the Presidio to the park service from going ahead. See 139 CONG. REC. NO. 158 H9652 (daily ed. Nov. 15, 1993) and 139 CONG. REC. NO. 160 S15837 (daily ed. Nov. 17, 1993).

48. See interview with Chandler, *supra* note 46.

49. See interview with Feierabend, *supra* note 36.

50. See FGMPA, *supra* note 15, at 17.

the early phases of conversion to a national park area.⁵¹ At the time, it was estimated that the cost of operating the Presidio during the transition period would be about \$45 million, much greater than the estimated \$25 million budget called for under National Park Service management.⁵² Unfortunately, this aspect of the general management plan was altered dramatically when the Sixth Army decided to leave the Presidio in 1994. This decision caught the National Park Service by surprise when it was announced on December 8, 1994.⁵³

One factor that contributed to the Sixth Army's decision to leave the Presidio was the addition of \$7.5 million to the Fiscal Year 1994 defense appropriations act.⁵⁴ When the House/Senate conference was held on the legislation to resolve the differences in the two versions of the bill, the members of the conference committee provided the money for the repair and rehabilitation of military structures transferred from the Department of Defense to the National Park Service at the Presidio.⁵⁵ The action by Congress concerned the army for they feared if they remained at the Presidio, their contribution toward the costs of operating the Presidio would continue indefinitely.⁵⁶

51. FGMPA, *supra* note 15, at 22.

52. *See* FGMPA, *supra* note 15, at 18.

53. *See* interview with Chandler, *supra* note 46.

54. *See* Department of Defense Appropriations Act, 1994, Pub. L. No. 103-139, 107 Stat. 1418.

55. *See* H.R. CONF. REP. NO. 103-339, at 167 (1993). The conferees added a total of \$25 million to the defense appropriations act for various national park projects. The \$25 million was divided by giving \$10 million for projects at GGNRA, \$10 million for the conversion and rehabilitation of military structures at Fort Wadsworth, New York, and \$5 million for the park service's cyclic resource system. Of the \$10 million for GGNRA, \$7.5 million went to the Presidio and the rest was for the repair of other military buildings within GGNRA.

56. *See* interview with Chandler, *supra* note 46. Even before the conference committee met, the House appropriations committee had criticized the army for not living up to its commitment of the previous fiscal year to provide \$21 million for repairs and maintenance at the Presidio. The committee directed the army to abide by its pledge to do this work. *See* H.R. REP. NO. 103-254, at 70 (1993). Ironically, four years later Congress was still criticizing the army for the environmental cleanup work it was doing at the Presidio because the work was not meeting "the ecological, health and safety criteria appropriate for a national park." H.R. REP. NO. 105-337, at 62 (1997).

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It was not funding from the army, however, that was the key to the future of the Presidio. To fulfill the general management plan, legislation would be proposed to authorize the creation of a partnership institution to manage certain properties. The legislation also would provide authority for leasing of buildings, for using various capital financing tools, and for the retention of rent proceeds to offset operating and maintenance costs of the Presidio.⁵⁷ At least that was the intent of the general management plan. While the initial legislation introduced to meet these goals started out in this direction, it would be very different when Congress completed action two and a half years later.

V. INTERIM AUTHORITY FOR LETTERMAN-LAIR

In July 1993, before the draft general management plan amendment was released, there was the first real effort to thwart the park service's plans for the Presidio when a number of Republican members of the House of Representatives attempted to freeze the operating budget. An amendment was offered by Representative John Duncan (R-TN) during House floor consideration of the Fiscal Year 1994 interior appropriations bill to reduce the committee's recommended \$25 million appropriation for Presidio operations to the \$11.4 million level of the previous fiscal year. Mr. Duncan objected to the projected cost to convert the military base, noting that the \$45 million, full-operating budget for the Presidio would be three times that spent on Yellowstone National Park, making the Presidio the most expensive park in the country.⁵⁸ He said that the Park Service was ill-equipped to be a landlord and that its plans to tear down buildings did not make sense in a city where housing was unaffordable to a majority of people.⁵⁹

Several members of Congress opposed this proposal with Representative Sidney Yates (D-IL), chairman of the interior

57. See FGMPA, *supra* note 15, at 114.

58. For debate on the Duncan Amendment, see 139 CONG. REC. NO. 98 H4709-16 (daily ed. July 15, 1993).

59. See *id.*

appropriations subcommittee, arguing that the law said the Presidio should be a park, and Congress had the responsibility to care for it as a park. In the end, the Duncan amendment was defeated on a vote of 193 to 230.⁶⁰

Senators Feinstein and Boxer, as well as Representative Pelosi recognized that help was needed immediately to give the park service authority to lease buildings and to generate revenue that would assist in meeting the costs of running the Presidio. On August 30, 1993, these three members sent a letter to Senator Dale Bumpers, chairman of the Senate Subcommittee on National Parks, asking him to provide temporary leasing authority to the secretary of the interior because there was insufficient time to enact permanent trust legislation in the remainder of the congressional session.⁶¹ They asked him to include the draft language they enclosed with the letter as an amendment to an unrelated minor boundary adjustments bill.⁶² Since the army planned to leave the Presidio in September 1994, it was critical to have tenants available to occupy the empty structures prior to the scheduled date of departure.

Behind the request of the two senators to Chairman Bumpers was the understanding that the University of California at San Francisco ("UCSF") was seeking new campus facilities and the Presidio provided a logical place. The park service had been in discussions with the university for some time, but legislation was needed to proceed with such an arrangement.⁶³

60. *See id.* While the Duncan Amendment failed, the money provided in the FY 1994 interior appropriations bill was not the first funding that had been appropriated to the park service for Presidio operations. From FY 1990 through FY 1993, \$7.275 million had been provided to the Department of the Interior for Presidio operations and \$15 million had been given to the Department of Defense for joint operations and other planning efforts required for the transition to park service administration. These figures did not include over \$60 million that had been appropriated to the Department of Defense for infrastructure improvements to roads, sewers, electrical systems, grounds, etc.

61. *See* Letter from Representative Nancy Pelosi, Senator Barbara Boxer, and Senator Dianne Feinstein to Senator Dale Bumpers (Aug. 30, 1993). (Letter on file with author).

62. *See id.*

63. *See* interview with Chandler, *supra* note 46.

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Because of uncertainties about when the Senate Energy Committee would proceed on the minor boundary adjustment bill to which the members of the California delegation wished to add the Letterman-Lair leasing authority, Representative Pelosi decided to use every option available and introduced the authority as a separate bill, H.R. 3286, on October 14, 1993.⁶⁴ The bill authorized the secretary of the interior to use the resources of the Presidio to promote research, education, health and science, and cultural understanding, among other things. The secretary would be given the authority to enter into leases for all or part of the Presidio in accordance with the General Management Plan. Leases would be made at fair market value, and the use of buildings to house employees of federal agencies would be allowed. The proceeds would be retained by the secretary for the benefit of the Presidio and its properties.⁶⁵ A comparable bill had been introduced in the Senate by Senator Feinstein, S. 1549.⁶⁶

At the House hearing on H.R. 3286, representatives of the park service and the secretary of the interior testified in support of the bill, recognizing that it was essential in an era of limited federal budgets.⁶⁷ During committee consideration, however, the legislation was amended to provide leasing authority only for the Letterman-Lair complex, the part of the Presidio where potential tenants had contacted the park service about leasing buildings. The committee stated that the bill was an interim measure to address the most pressing needs at the Presidio and that the committee was committed to enacting more comprehensive legislation.⁶⁸ The bill was debated on the

64. See interview with Judy Lemons, administrative assistant to Representative Nancy Pelosi, (Jan. 7, 1998, Washington, D.C.); H.R. 3286, 103d Cong., 139 CONG. REC. NO. 138 H 8001 and E 2442 (daily ed. Oct. 14, 1993).

65. See *id.*

66. See S. 1549, 103d Cong., 139 CONG. REC. NO. 139 S13552 (daily ed. Oct. 15, 1993).

67. See *Hearing on H.R. 3286, a Bill to Provide for the Management of the Presidio by the Secretary of the Interior, and for Other Purposes Before the Subcommittee on National Parks, Forests and Public Lands, Committee on Natural Resources, U.S. House of Representatives*, 103d Cong. (Oct. 26, 1993) (statement of Ira Michael Heyman, counselor to the secretary and deputy assistant secretary for policy, Department of the Interior and Roger Kennedy, director, National Park Service) .

68. See H.R. REP. NO. 363, 103d Cong., at 4 (1993).

House floor shortly thereafter with the amended H.R. 3286 leasing authority for Letterman-Lair passing the House of Representatives on November 15, 1993.⁶⁹

One reason the committee provided leasing authority only for the Letterman-Lair complex involved a division among members of Congress on what should be done permanently at the Presidio. Some key Democrats on the committees with jurisdiction over the Presidio thought that if the area was going to be in the park system, it should be managed just like other parks.⁷⁰ Many Republicans, however, thought this large of an undertaking was beyond the expertise of the park service and urged an alternate management system.⁷¹ Representative Pelosi was being urged by members of the Presidio Council to support the creation of a partner organization to help the park service run the Presidio — also because of the council's belief the service was unable to do it alone.⁷²

Additionally, the committee's action to extend the leasing authority to the Letterman-Lair complex alone reflected a concern about whether a partner organization would ever be established if interim authority was extended to the entire Presidio and the National Park Service was successfully using the more-comprehensive authority. This created some dilemmas for park service officials at the Presidio who believed the original Pelosi legislation was a good idea and who wanted to show the park service could manage this area effectively. On the other hand, the park service knew it did not have the best legal authorities, nor the expertise in leasing buildings on such a scale as the Presidio, and that a partner organization was needed to assist with this activity.⁷³

69. See 139 CONG. REC. NO. 158 H 9622-23 (daily ed. Nov. 15, 1993).

70. See interview with Judy Hart, program leader, Community Assistance & Partnership Parks, National Park Service, former legislative specialist, Office of Legislative and Congressional Affairs, National Park Service (October 2, 1997, Washington, D.C.).

71. See interview with Chandler, *supra* note 46.

72. See *id.*

73. See *id.* At the time the Presidio Trust formally began operations in the summer of 1997, the park service had already leased or had rental agreements for 32 per-

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To help guarantee that the Letterman-Lair leasing authority would become law by the end of the session, the House Committee on Natural Resources amended an unrelated Senate bill, S. 433, to include the authority.⁷⁴ Both the stand-alone bill, H.R. 3286, and the amended S. 433 were considered and approved by the House on the same day.⁷⁵ The Senate agreed to the House amendments to S. 433 two days later on November 17, 1993.⁷⁶ S. 433 was signed into law on December 2, 1993.⁷⁷

Unfortunately, the new authority granted the park service did not have the intended results in securing UCSF as a tenant at the Presidio. After months of negotiations it was clear the park service and UCSF could not reach agreement on the value of the land and buildings. The park service concluded UCSF was looking for a bargain deal and was unwilling to pay fair market value for a long-term lease. As a result, the park service broke off negotiations and weathered a great deal of criticism from the congressional delegation and local officials.⁷⁸

While the process of turning the military base into a park was moving forward, it was not going as smoothly as may have been anticipated by the park service. The problems encountered with the Letterman-Lair authority would be repeated as consideration of the comprehensive trust legislation was pursued.

VI. THE FIRST ATTEMPT AT TRUST LEGISLATION

Even while Congress completed action on the Letterman-Lair authority, comprehensive legislation had already been

cent of leasable space and was receiving \$4.2 million in yearly tenant reimbursements. Over \$10 million had been invested by tenants through FY 1996 in capital improvements to buildings with a projected \$12.9 million committed for FY 1997.

74. See H.R. REP. NO. 103-365, at 2-6 (1993).

75. See 139 CONG. REC. NO. 158 H9620-23 (daily ed. Nov. 15, 1993).

76. See 139 CONG. REC. NO. 160 S15958 (daily ed. Nov. 17, 1993). Because the Senate passed S. 433, as amended by the House to include the Letterman-Lair authority, no further action was taken on H.R. 3286.

77. See Pub. L. No. 103-175, 107 Stat. 2002 (1993).

78. See interview with Chandler, *supra* note 46.

introduced in both the House and Senate. Representative Pelosi led this effort with her bill, H.R. 3433, which was followed closely by Senator Boxer's bill, S. 1639.⁷⁹ Each bill created a public benefit corporation, the Presidio Corporation, within the Department of the Interior to manage the leasing, maintenance, rehabilitation, repair, and improvement of specified properties within the Presidio.⁸⁰ The corporation would be run by a board of directors composed of nine voting members and five non-voting members, with broad authority to manage the properties. Loans could be offered to occupants of property for the preservation, restoration, or maintenance of the property, and the corporation could solicit funds to carry out its duties. Revenues would be retained to defray the costs incurred by the corporation, with an amount going to the secretary to help maintain common property. The corporation could also borrow funds from the Treasury of the United States or from private sources and procure needed goods and services. Annual funding was limited to \$25 million to implement the legislation. In the event of failure or default, all interests and assets of the corporation would revert to the United States to be administered by the secretary.⁸¹

As soon as the bills had been introduced, the opposition was readily apparent. Representative James Hansen (R-UT) sent a letter to the director of the park service questioning the cost of the Presidio project and "the ability of an already constrained National Park Service to pull it off." He asked about park service plans and why less-costly alternatives had not been considered.⁸² The concerns expressed in this letter would be magnified the following Congress when Representative Hansen assumed the chairmanship of the House Subcommittee on Na-

79. See H.R. 3433, 103d Cong., 139 CONG. REC. NO. 152 H8794 (daily ed. Nov. 3, 1993), S. 1639, 103d Cong., 139 CONG. REC. NO. 155 S15334 (daily ed. Nov. 8, 1993).

80. The corporation would receive a leasehold interest in the Letterman-Lair complex, Fort Scott, the Main Post, Golden Gate, Cavalry Stables, Presidio Hill, Wherry Housing, East Housing, the structures at Crissy Field and other buildings the secretary deemed appropriate. See S. 1639 and H.R. 3433, *supra*.

81. See H.R. 3433, 103d Cong., 139 CONG. REC. NO. 152 H8794 (daily ed. Nov. 3, 1993), S. 1639, 103rd Cong., 139 CONG. REC. NO. 155 S15334 (daily ed. Nov. 8, 1993).

82. Letter from Representative James Hansen to Director of the National Park Service Roger Kennedy (Nov. 5, 1993) (Letter on file with author).

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tional Parks and Lands, which had jurisdiction over the Presidio legislation.

The question of the cost of the Presidio transfer was revisited by Representative Duncan in his alternative bill, H.R. 4078.⁸³ He felt the American people could not afford the park service's plan for the Presidio and characterized his bill as a way to "protect the Presidio of San Francisco at no additional cost to the taxpayer."⁸⁴ His legislation provided interim authority to the secretary to enter into leases for the use of any property at the Presidio, with proceeds going to defray the costs of operating the area. This authority would be good only for two years unless the city of San Francisco rezoned the property to allow the sale of the Public Health Service Hospital and the golf course. Additionally, the bill directed the sale of the Letterman complex to the UCSF.⁸⁵

H.R. 4078 also set up a Presidio Public Benefit Corporation with authorities similar to the Pelosi bill. The corporation, however, would receive full fee title to the property transferred to it. All proceeds generated by leasing the properties would go to the corporation. The bill provided no federal funds to the corporation for its operation and the legislation was silent on what would happen if the corporation failed.⁸⁶

On May 10, 1994, a House hearing was held on the Pelosi and Duncan bills. National Park Service Director Roger Kennedy urged early enactment of the Pelosi legislation with amendments to be recommended by the administration. Kennedy opposed the Duncan bill saying the extensive planning

83. H.R. 4078, 103d Cong., 140 CONG. REC. NO. 30 H1539 (daily ed., Mar. 17, 1994).

84. Dear Colleague letter from Representative John Duncan to Members of the House of Representatives asking for cosponsors of H.R. 4078 (Apr. 12, 1994) (Letter on file with author).

85. See H.R. 4078, *supra* note 83.

86. See *id.*

process showed the Pelosi approach offered the best way to insure the preservation of the Presidio's resources.⁸⁷

Recognizing that the cost of the park was a problem, Kennedy said that the park service was "evaluating options that would allow the current discretionary budget to decline to about \$16 million after the year 2009."⁸⁸ While the park service believed this figure could be achieved, it would be challenged in the next Congress and would be fundamentally altered in the final legislation signed into law.

Two days following the House hearing, the Senate Subcommittee on Public Lands, National Parks and Forests held a similar hearing on the Senate bill, S. 1639, as well as Senator Feinstein's proposal to provide the secretary of the interior with interim lease authority.⁸⁹

There were comparable witnesses at the Senate hearing, including Deputy Assistant Secretary of the Army Paul Johnson who gave a summary of the transfer from the military to the park service. He noted that negotiations between the army and the park service had been ongoing since December, 1993.⁹⁰ While most issues were resolved locally, some matters, including long-term control of army facilities, operation of the golf course, family housing, and the disposition of the commissary and PX, were still outstanding. He characterized the negotiations as at a "very delicate stage" and that even though he ex-

87. See *Hearing on H.R. 3433 and H.R. 4078, Bills to Provide for the Management of Portions of the Presidio Under the Jurisdiction of the Secretary of the Interior, and for Other Purposes, Before the Subcommittee on National Parks, Forests, and Public Lands, House Committee on Natural Resources*, 103d Cong. (May 10, 1994) (statement of Roger G. Kennedy, director, National Park Service).

88. *Id.* at 6.

89. See *Hearing on S. 1549, to Establish the Golden Gate National Recreation Area to Provide for the Management of the Presidio by the Secretary of the Interior, and S. 1639, Authorizing Funds for the Management of Portions of the Presidio Under the Jurisdiction of the Secretary of the Interior, Before the Subcommittee on Public Lands, National Parks and Forests, Senate Committee on Energy and Natural Resources*, 103d Cong. (May 12, 1994).

90. See *id.* (statement of Paul W. Johnson, deputy assistant secretary of the Army).

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pected a positive outcome, there could be no assurances that the Presidio would not be abandoned completely by the army.⁹¹

Perhaps the assistant secretary had overstated the smoothness of the negotiations as the park service found them to be long and difficult. The army particularly wanted to maintain administrative jurisdiction over the buildings they would have; they did not want to be a tenant of the National Park Service. After many months, agreement was reached on forty of forty-three separate elements that were the subject of negotiation. The unresolved issues, however, had to be sent back to Washington, including the future of the golf course, the commissary, and the PX.⁹² Mr. Johnson's comments about the future of the army at the Presidio were clairvoyant, as just six months later the army would announce it was leaving the Presidio for good.

With the hearings over, the House moved forward in considering the comprehensive Presidio legislation in committee. At the subcommittee markup of H.R. 3433 on June 27, 1994, Chairman Bruce Vento offered a substitute amendment to create the "Presidio Trust," a government corporation that would assist the park service at the Presidio. The substitute provided interim lease authority to the park service for five years until the trust was established. The Presidio Trust was created within the Department of the Interior with the secretary transferring to the trust a leasehold interest to specified properties. The trust was given the authority to lease and manage the properties with the proceeds being used to pay for operational, maintenance, and repair costs. The secretary of the interior was given review authority over all leases and the trust operations were streamlined.⁹³

The subcommittee favorably reported the bill, and two days later, on June 29, 1994, the Committee on Natural Resources adopted the subcommittee bill and several other amendments

91. *See id.*

92. *See* Interview with Chandler, *supra* note 46.

93. *See Markup of H.R. 3433, in the Subcommittee on National Parks, Forests and Public Lands, House Committee on Natural Resources, 103d Cong. (June 27, 1994) (opening statement of Rep. Bruce F. Vento).*

by a vote of twenty-eight to fourteen.⁹⁴ The committee said it was aware of the cost concerns expressed, but felt confident that it had provided a balanced bill. When conflicts developed between the generation of revenue and protection of resources the committee expected “the National Park Service and the Presidio Trust [to] err on the side of the resources.”⁹⁵

While the committee knew the project presented risks, it provided sufficient checks and balances to insure that the trust and the park service would “operate as symbiotic partners working together to achieve mutual goals” and the committee expected that “the two entities [would] . . . be in constant consultation.”⁹⁶ The park service had achieved its desire for a strong working relationship with the trust in the legislation. The success, however, would be short-lived as this relationship would be almost non-existent when the legislation moved over into the 105th Congress.

Fourteen Republicans on the committee opposed the bill for a number of reasons including its cost; unwarranted federal support for specific buildings at the site, such as the bowling alley; the continued maintenance of the pet cemetery; and the significant federal subsidy provided to the tenants. They termed the bill “bad policy and bad for the National Park Service.”⁹⁷

These arguments would be reflected in the House floor debate. Most Democrats were strongly supportive of the bill; many Republicans said the federal government did not have funds for such a project when there were large backlogs of construction and maintenance projects.⁹⁸ While amendments were offered to reduce the authorized funding level for the Presidio,

94. See H.R. REP. NO. 103-615, at 25-26 (1994).

95. *Id.* at 12.

96. *Id.* at 14.

97. *Id.* at 32-35.

98. For House floor debate on H.R. 3433 see 140 CONG. REC. NO. 117 H8634-66 (daily ed. Aug. 18, 1994).

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none were successful. The bill passed the House by a vote of 245 to 168.⁹⁹

In the Senate, the House-passed bill was reported favorably from the Energy and Natural Resources Committee with several minor amendments.¹⁰⁰ Unfortunately, the bill never made it to the Senate floor for debate. The formal transfer of the Presidio had taken place on October 1, 1994, and there was a desire to do everything possible to enact the trust legislation before Congress adjourned for the year. On October 7, the last day of the 103rd Congress, with the Senate refusing to act on H.R. 3433, the House tried again to force Senate debate by passing H.R. 5231, a bill identical to H.R. 3433.¹⁰¹ When Senator Dale Bumpers (D-AR) made a motion on the Senate floor to consider H.R. 5231, however, Senate Majority Leader Robert Dole (R-KS) objected as he said there were concerns from other Republicans, although he personally had no problems with it.¹⁰² Thus, the 104th Congress ended without enacting any Presidio Trust legislation.

VII. A NEW CONGRESS AND NEW CHALLENGES

On November 8, 1994, the voters of the country signaled their repudiation of the Clinton Administration and the policies

99. *See id.*

100. *See* S. REP. NO. 103-429, at 26-27 (1994). The committee added four titles containing the text of bills previously reported and passed by the Senate, but which had not been acted on by the House. All of these titles authorized projects important to the home state of the committee chairman, J. Bennett Johnston (D-LA). The four titles authorized a lower Mississippi Delta region initiative, established the New Orleans Jazz National Historical Park in Louisiana, established the Cane River Creole National Historical Park in Louisiana, and established the Cane River National Heritage Area in Louisiana.

101. *See* 140 CONG. REC. NO. 145 H11283 (daily ed. Oct. 7, 1994).

102. *See* 140 CONG. REC. NO. 146 S15042 (daily ed. Oct. 8, 1994). While the objections were not stated for the record, it was known, among other possible reasons, that there had been continued unhappiness by some Republicans over passage of the California Desert Protection Act, Pub. L. 104-433, which created several new wilderness areas in southern California and the new Mojave National Preserve. The bill had been highly controversial and was passed in the last few days of the 103d Congress over the continuing objections of a number of Republican members including the representatives of the congressional districts where the newly designated wilderness areas and preserve were located.

of the Democratic Congress by turning control of both the Senate and the House of Representatives over to the Republicans. The elections were most surprising in ending forty years of Democratic rule of the House of Representatives.¹⁰³ The credit for these results went to the Republican whip of the House, Newt Gingrich (R-GA), and his idea to promote a "Contract with America."¹⁰⁴

The most immediate effect of the election was a whole new cadre of committee chairmen in the House and Senate, most of whom were viewed as directly opposite their predecessors from the other side of the political spectrum. The chairmanship of the Senate Energy Committee passed from Senator J. Bennett Johnston (D-LA) to Senator Frank Murkowski (R-AK). On the House side, the change was even more dramatic where Representative George Miller (D-CA) was replaced by Representative Don Young (R-AK).¹⁰⁵

The Republican leadership of the House revised a number of other aspects of the chamber's operations, including renaming several House committees to reflect the party's views of the committees' jurisdiction. For example, the name of the House committee with jurisdiction over national park issues was changed from the Committee on Natural Resources to the Committee on Resources. The subcommittee handling park legislation was no longer known as the Subcommittee on National Parks and Public Lands, but as the Subcommittee on National Parks, Forests, and Lands.¹⁰⁶

The effect of these changes on the National Park Service and its efforts to create a Presidio Trust became evident in the first months of the 104th Congress. Several contentious hearings occurred in the House including one on the financial man-

103. *After 40 Years, GOP Wins House*, Congressional Quarterly Almanac, 103d Cong., 1994, Vol. L (Washington, D.C.: Congressional Quarterly, Inc., 1995) at 570.

104. For an interesting look at Representative Gingrich and the Contract with America see ELIZABETH DREW, *SHOWDOWN: THE STRUGGLE BETWEEN THE GINGRICH CONGRESS AND THE CLINTON WHITE HOUSE* (New York: Simon & Schuster, 1996).

105. See 1995-1996 Official Congressional Directory, S. Pub. 104-14, 104th Cong. (1995), at 364, 410-11.

106. See *id.*

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agement of the park service, where the park service's accountability was questioned.¹⁰⁷ Another hearing considered a bill by Representative Joel Hefley, H.R. 260, to create a commission to report to Congress with "a list of National Park System units or portions thereof where National Park Service management should be modified or terminated."¹⁰⁸ A joint House-Senate hearing examined a General Accounting Office report that found a deterioration in visitor services and park resources.¹⁰⁹ Yet another House hearing concerned H.R. 1091, a bill that, among other things, would shrink the boundaries of Richmond National Battlefield and Shenandoah National Park.¹¹⁰

Along with these efforts, the new Republican chairmen of the House and Senate Budget and Appropriations Committee were moving forward with plans to cut previously appropriated spending for the current fiscal year and to reduce park service budgets even further in the fiscal year starting October 1, 1995. By the end of July, Congress had passed and the president had signed legislation to rescind several billion dollars of prior ap-

107. See *Joint Oversight Hearing to Review Financial Management in the National Park Service and the National Park Service Reorganization Plan Before the Subcommittee on National Parks, Forests and Lands, Committee on Resources and the Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. House of Representatives*, 104th Cong. (Feb. 9, 1995).

108. *Hearing on H.R. 260, to Provide for the Development of a Plan and a Management Review of the National Park System and to Reform the Process by which Areas are Considered for Addition to the National Park System, and for Other Purposes Before the Subcommittee on National Parks, Forests and Lands, Committee on Resources, U.S. House of Representatives*, 104th Cong. (Feb. 23, 1995). H.R. 260 became known as the "park closing bill" and its defeat became a high priority for Secretary of the Interior Bruce Babbitt, who traveled extensively around the country speaking of the Republicans' intention to close our parks. H.R. 260 was defeated in the House of Representatives on Sept. 19, 1995 by a vote of 180 to 231, with sixty-seven Republicans joining most Democrats in defeating it.

109. See *Joint Hearing to Examine the Condition of the National Park System Before the Subcommittee on Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources, U.S. Senate, and Subcommittee on National Parks, Forests, and Lands, Committee on Resources, U.S. House of Representatives*, 104th Cong. (Mar. 7, 1995).

110. See *Hearing on H.R. 1091, a Bill to Improve the National Park System in the Commonwealth of Virginia, Before the Subcommittee on National Parks, Forests and Lands, Committee on Resources, U.S. House of Representatives*, 104th Cong. (Mar. 9, 1995).

propriations, including \$42 million for National Park Service programs.¹¹¹

It was in this climate that the Presidio faced its first challenge with the consideration of the budget for the coming fiscal year. In the House version of the Fiscal Year 1996 budget, there was no discussion of the Presidio.¹¹² When the chairman of the Senate Budget Committee released his proposal for the Fiscal Year 1996 budget, however, it included an assumption that the Presidio would be sold over a three-year period.¹¹³ Senator Boxer, a member of the committee, began immediate efforts to explain the implications of such a move. She was successful in having the committee-reported budget resolution recognize there were costs associated with the cleanup of the Presidio. Additionally, the resolution admitted that local zoning laws and building codes would assure keeping the area for public use and that altering this could take years. The savings from the potential sale could be small and the only way to realize these savings might be through enactment of legislation to create a Presidio Trust.¹¹⁴ The final House/Senate conference agreement for the Fiscal Year 1996 budget did not call for the sale of the Presidio, but required reforms to reduce the cost to the government.¹¹⁵

With the initial budget scare averted, hearings began on new legislation introduced to create a Presidio Trust. Passage of this legislation had become a high priority for the National Park Service, although the new Congress presented an uncertain outlook.

111. See Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995, Pub. L. No. 104-19, 109 Stat. 194, 208 (1995).

112. See H.R. REP. NO. 104-120 (1995).

113. See STAFF OF SENATE COMMITTEE ON THE BUDGET, 104th Cong., FY 1996 BALANCED BUDGET RESOLUTION, CHAIRMAN'S MARK (May 1995), at 300-4.

114. See S. REP. NO. 104-82, at 42 (1995).

115. See H.R. CONF. REP. NO. 104-159, at 68 (1995).

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Representative Pelosi had again introduced her bill to create a Presidio Trust, H.R. 1296.¹¹⁶ She was able to persuade Representative Stephen Horn (R-CA), and Representative Benjamin Gilman (R-NY) to join her as cosponsors to demonstrate bipartisan support for the legislation.¹¹⁷

H.R. 1296 called for the creation of a Presidio Trust, a structure that Pelosi noted was “based on the study of nineteen management models by independent financial and real estate experts who determined that this legislative proposal would be successful in reducing costs to the Government.”¹¹⁸ The bill differed from the one in the previous Congress by giving complete administrative jurisdiction to the trust for the transferred properties instead of just a leasehold interest. Also, a smaller, seven-person board would be created with a simpler management structure. The financing provisions were changed to address concerns about the cost of the Presidio.¹¹⁹ Like the previous bill, the trust would be able to retain revenues to manage the area and the trust’s work could be aided with various financing mechanisms.¹²⁰

A hearing was held on May 16, 1995, on H.R. 1296 in the House subcommittee.¹²¹ Director Kennedy said that the park service preferred the partnership between the National Park Service and the Presidio Trust as found in the bill passed by the House in the last Congress. As H.R. 1296 was written, he said “the entire Presidio is potentially subject to the transfer” of administrative jurisdiction to the trust. He went on to say

116. See H.R. 1296, 104th Cong., 141 CONG. REC. NO. 53 H3572 (daily ed. Mar. 22, 1995).

117. See 141 CONG. REC. NO. 54 E665 (daily ed. Mar. 23, 1995).

118. *Id.* Representative Pelosi was referring here primarily to the work conducted by the Presidio Council mentioned earlier in this article. See also Presidio Building Leasing and Financing Implementation Strategy, A Supplement to the Draft General Management Plan Amendment, Presidio of San Francisco, Golden Gate National Recreation Area, California, Oct., 1993.

119. See 141 CONG. REC. NO. 54 E665 (daily ed. Mar. 23, 1995).

120. See H.R. 1296, *supra* note 116.

121. See *Hearing on H.R. 1296, a Bill to Provide for the Administration of Certain Presidio Properties at Minimal Cost to the Federal Taxpayer, and for Other Purposes Before the Subcommittee on National Parks, Forest and Lands, Committee on Resources, U.S. House of Representatives*, 104th Cong. (May 16, 1995).

that while the park service favored a major role for the trust, the park service should be designated to protect and to interpret the Presidio's resources.¹²²

The difference in the park service's working relationship with the new Congress was readily apparent with a new political party controlling the agenda. While the park service had been asked some specific questions about Presidio operations in phone conversations with staff, neither the legislative staff nor park officials were shown a copy of the proposed substitute before subcommittee consideration of the bill nor were given an opportunity to comment on it. The subcommittee met on June 27, 1995, and adopted the substitute proposed by the subcommittee chairman, with the full House Resources Committee taking similar action a couple of weeks later.¹²³

The substitute bill that had been adopted reflected the changed political landscape. This bill, like many others, started with a "findings" section — a statement by Congress of facts that it takes to be true and which form the basis for taking legislative action. The findings are usually hard to argue with and command little attention of members or staff.

In the Pelosi bill, finding (4) said that the Presidio "is a part of the Golden Gate National Recreation Area"¹²⁴ while the committee substitute said that the Presidio "is located within the boundaries of the Golden Gate National Recreation Area."¹²⁵ This was a small change, yet it appeared to be a symbolic effort to remake the legislative history of the Presidio by making it appear the Presidio was not intended to be part of the national recreation area.¹²⁶

122. *Id.* (statement of Roger G. Kennedy, director, National Park Service).

123. See H.R. REP. NO. 104-234, at 8 (1995).

124. H.R. 1296, *supra* note 116.

125. H.R. REP. NO. 104-234, *supra* note 123, at 1.

126. The House report for the bill also included this comment about the 1972 legislation creating GGNRA, where Congress authorized the transfer of the Presidio to the Park Service: "Although neither the legislative study completed by NPS or the bill passed by Congress contemplated that NPS would manage the entire Presidio area, it was all included in the park boundary as enacted." This statement appears to misin-

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The substitute provided the secretary of the interior with interim authority to manage leases currently in existence and to retain proceeds to help manage the area. The secretary's authority to enter into new leases was withdrawn in response to the committee's concern that the secretary was currently pursuing leases which returned less than full fair market value.¹²⁷

The most substantial change involved the establishment of the trust and the delineation of its area of responsibility. The partnership advocated by the park service at the subcommittee hearing was completely changed. The committee created the trust as an independent government corporation outside the Department of the Interior, which the committee determined would save money and provide for a more viable trust.¹²⁸ This was troubling to the park service because it was anticipated that having the trust within the interior department would ensure that park service concerns would be given equal consideration if disputes arose between the two, with the secretary being the ultimate arbiter. Having the trust outside the department put the dispute resolution function with the administration — primarily through the Office of Management and Budget and the Council on Environmental Quality, the agency charged with resolving interagency disputes. This made it less likely the park service would prevail in such disputes and provided no guarantees that the park's mission and values would be preserved at the Presidio.

Additionally, the committee gave the trust management responsibility for 80 percent of the Presidio's property, saying that the "integrated approach . . . [was] unworkable."¹²⁹ Under

terpret the reasons Representative Burton chose to include the Presidio in the boundaries of GGNRA. He wanted to preserve its resources and to insure its future protection from adverse development, something that would have been difficult if it was not within the park boundary. The issue of management responsibility was not addressed in the 1972 legislation, although it is probably a safe assumption Burton wanted the park service to manage the Presidio since he placed it within the boundary of a national park unit.

127. See H.R. REP. NO. 104-234, *supra* note 123, at 9.

128. See *id.*

129. *Id.* at 9-10.

the new approach, the park service retained authority for administering the lands it currently managed along the coastal strip, in addition to some open space areas adjacent to these lands.¹³⁰ This undermined the approach advocated in the general management plan where the park service would have overall management responsibility for the Presidio — just as it had for other units of the park system. By giving the trust management responsibility for such a large part of the Presidio, the park service was not assigned any role to insure the park's mission would be preserved or other applicable park service laws would be followed. This responsibility would be left to Congress through its oversight function.

While the House committee charged the park service with the responsibility for interpretation and public education at the Presidio, the committee felt the service lacked expertise in other management areas. The committee stated that if the trust desired to use the park service for any operational responsibilities, sufficient authority was provided to the trust in the bill.¹³¹

The bill required that any existing leases, along with any unobligated funds the secretary had been appropriated for the Presidio, be transferred to the trust whenever any properties were given to the trust. Since the bill stated that the transfers had to be completed within one year, under this provision, the park service would be left with no funds to manage its portion of the Presidio. The committee said that funding for management of the lands retained by the secretary was “already built into the park base funding” for GGNRA.¹³²

The committee gave the trust greater leeway in managing the area by saying it only had to carry out its activities in accordance “with the general objectives of the general manage-

130. *See id.* at 10.

131. *See id.*

132. H.R. REP. NO. 104-234, *supra* note 123, at 9. This provision would continue to cause problems during the consideration of this legislation as the estimated \$400,000 cost of managing the coastal strip was not part of GGNRA's budget and there appeared little chance of getting an addition to the budget to cover these costs.

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ment plan approved for the Presidio.”¹³³ This gave the trust the ability to use the FGMPA as a guide for its activities, but it also meant the trust could disregard it completely.

Other provisions exempted the trust from specific procurement laws, and directed the trust to develop a program to reduce the cost of the Presidio to the federal government. The committee said it found the park service plan unrealistic and urged that any program consider more demolition of existing buildings as all were not historically significant.¹³⁴

The bill provided three main financing tools to encourage the use of private funds for capital improvements. First, it allowed the use of loan guarantees for potential lessees upon approval of the secretary of the treasury of the terms of the guarantee. Second, it authorized making loans, subject to appropriations, to occupants of property. Third, the bill authorized the trust to borrow funds from the treasury department, not to exceed \$50 million at any time. This could be done only after the secretary of the treasury found the projects to be credit worthy with a repayment schedule established.¹³⁵ This provision provided another example of how much the congressional climate had changed. In the previous Congress, the borrowing limitation was \$150 million in the bill that passed the House and the version that had been reported by the Senate Energy Committee for floor consideration.¹³⁶

Also to ensure the trust did everything it could to reduce costs to the federal government, the committee established criteria for selection of tenants by requiring the trust “to consider the extent to which prospective tenants maximize the contribution to the implementation of the General Management Plan . . . and to the generation of revenues to offset costs of the

133. *Id.* at 11.

134. *See id.*

135. *See id.* at 11-12. During House committee consideration of the bill, Representative Duncan offered an amendment to reduce the total amount of bonds that could be issued to the trust by the secretary of the treasury to \$50 million in another effort to keep federal expenditures in check.

136. *See text of H.R. 3433 as passed by House in 140 CONG. REC. NO. 117 H8651 and S. REP. NO. 103-429, supra note 100, at 5.*

Presidio.”¹³⁷ The committee believed that tenants who “enhance the financial viability of the Presidio” were the most important for the future of the area.¹³⁸

Another major defeat for the park service came in the form of the reversionary clause. If in the future the trust should fail, the park service wanted to have management responsibility for the entire Presidio, just as it did for other units of the National Park System. The committee rejected this approach and recommended that should the trust fail, the lands would revert to the Department of Defense for disposal under the base closing law with the city of San Francisco having first right of refusal.¹³⁹ While the committee considered it unlikely that the trust would fail, it included the reversionary clause in the event the trust, by a two-thirds vote of the board, felt it could not carry out the requirements of the act.¹⁴⁰ While this provision was a prominent part of the bill, there was no indication what circumstances would trigger this authority.

Finally, the bill limited annual appropriations to \$25 million with a requirement that the trust become self-sufficient within twelve years. The trust was directed to establish a schedule to achieve this goal, but the committee report also said the committee did not intend the trust would cease operations merely by being unable to become self-sufficient within twelve years.¹⁴¹

While the bill was not what the park service wanted, discussions within the Department of the Interior, with other federal officials, and with members of Congress led the park service to the conclusion that this was the best bill that could be

137. H.R. REP. NO. 104-234, *supra* note 123, at 5.

138. *Id.* at 12.

139. *See id.* at 5.

140. *See id.* at 13.

141. *See id.* This was a somewhat confusing explanation of the self-sufficiency provisions. In the very next paragraph of the House committee report, it states that “[t]he greatest concern of the Committee has been the cost of the Presidio [T]he Committee believes that all Federal funding should be phased out and that the Presidio Trust should become self-sufficient . . . [and] that 12 years is an adequate time period in which to achieve self-sufficiency.” *Id.* It could be interpreted that the committee was saying it was uncertain what would happen if financial self-sufficiency was not achieved within the timetable set out in the bill.

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expected. The park service was willing to move ahead at this point, and to work for changes when the bill was in the Senate.

H.R. 1296 was debated on the House floor on September 18, 1995, where the statements of members were brief.¹⁴² Under the procedure adopted by the House for consideration of the bill, it was passed the next day by a vote of 317 to 101.¹⁴³

VIII. THE BILL MOVES TO THE SENATE

Even though the Senate also was controlled by the Republicans, it has a tradition of operating more on a bipartisan basis, and where issues specific to one state are concerned, of giving deference to the wishes of the senators from that state. At the time, Senator Feinstein had cosponsored the bill introduced by Senator Boxer, S. 594, to authorize the establishment of a Presidio Trust.¹⁴⁴ Senator Boxer had worked hard to get bipartisan support for the bill, with key senators as cosponsors, including Senator Dole, the majority leader, Senator Tom Daschle (D-SD), the minority leader,¹⁴⁵ and Senator Ben Nighthorse Campbell (R-CO), the subcommittee chairman.¹⁴⁶

S. 594 was similar to H.R. 1296, introduced by Representative Pelosi, and provided the same authorities for the trust and the park service.¹⁴⁷ The Senate was only slightly behind the House in moving the legislation. On June 29, 1995, a subcom-

142. See 141 CONG. REC. NO. 145 H9097-104 (daily ed., Sept. 18, 1995).

143. See 141 CONG. REC. NO. 146 H9152 (daily ed., Sept. 19, 1995). The House uses a procedure called "Suspension of the Rules" to expedite consideration of legislation. Bills considered under suspension of the rules in the House require a vote for passage of two-thirds of the members voting, with a quorum being present. Additionally, no amendments are permitted and debate is limited to 40 minutes. However, as with any rule, there are ways to get around the no amendments restriction if members need to do so.

144. See S. 594, 104th Cong., 141 CONG. REC. NO. 53 S4376 (daily ed. Mar. 22, 1995).

145. For Senate floor statement by Senator Dole see 141 CONG. REC. NO. 105 S9026 (daily ed., June 26, 1995); Senator Daschle was added as cosponsor on page S9100.

146. See 141 Cong. Rec. No. 91 S7787 (daily ed., June 6, 1995). Senator James Jeffords (R-VT) also joined as a cosponsor; see 141 Cong. Rec. No. 107 S9309 (daily ed., June 28, 1995).

147. See S. 594, *supra* note 144.

mittee hearing was held on the Boxer bill.¹⁴⁸ The chairman, Senator Campbell (R-CO), mentioned he had just returned from a visit to the Presidio where he had said that “the sale of the Presidio would happen over my dead body.”¹⁴⁹

At the hearing, Senator Frank Murkowski (R-AK) spoke of his concerns about the financing and “the reluctance of the Park Service to deal with some of the budget realities that I think are real.” He felt the desire of the park service to want to maintain a working relationship with the trust was unrealistic and that the park service should have been embracing the opportunity to have a competent organization help do its work.¹⁵⁰ Since the senator’s approval was necessary to report this bill from the committee he chaired, his comments left the park service concerned about its ability to obtain many changes to the bill passed by the House.

After the Senate hearing, action on the House bill proceeded and by mid-July, the shape of H.R. 1296 in the House was fairly clear. The park service felt the House version of the bill departed from several fundamental goals the service hoped to achieve. Throughout the summer in discussions with Senate committee staff on both the majority and minority side, it appeared that changes to the House bill would be proposed. The park service was urged to submit its concerns to the committee as soon as possible. Consequently, the park service began working with other bureaus within the interior department and with the Office of Management and Budget (“OMB”) in compiling a legislative report that would outline proposed changes to the bill.

After much deliberation, the park service decided to pursue a two-pronged approach to submitting its concerns to the Senate. A statement of principles to guide final legislation would

148. See *Hearing on S. 594, to Provide for the Administration of Certain Presidio Properties at Minimal Cost to the Federal Taxpayer Before the Subcommittee on Parks, Historic Preservation, and Recreation, Committee on Energy and Natural Resources, U.S. Senate, S. Hrg. 104-270, 104th Cong. (June 29, 1995).*

149. *Id.* at 1.

150. See *id.* at 7-8.

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be sent, followed by a detailed legislative report on specific sections of the bill.¹⁵¹

The letter outlining the principles guiding any final trust legislation discussed the fact that the Presidio should remain a part of GGNRA, that the trust should be established within the Department of the Interior, that it should be subject to the park's General Management Plan, that the park service should continue leasing activities in the interim, and that the properties administered by the trust should revert to the Department of the Interior if the trust should fail.¹⁵² While the House-passed bill had already rejected a number of these ideas, the park service felt it critical to reiterate and to urge adoption of these fundamental goals that it believed were important to insure a successful trust and to protect the Presidio's resources.

Further conversations with Senate committee staff and with the two California senators' offices achieved some agreement with these principles; however, negotiations on the actual language proposed in the legislative report would be critical to realizing the principles. In contrast to the park service's work with the House, the Senate staff met frequently with the park service staff, called several times for clarifications, and discussed alternatives if the committee could not agree to suggested changes.

At the last minute, the Senate Energy Committee decided to hold another hearing on the House and Senate Presidio bills.¹⁵³ This hearing on December 20, 1995, was scheduled the day before the bill would be considered by the committee, although

151. Both of these documents are reprinted in S. REP. NO. 104-202, at 19-27, at 19-27 (1996). This decision was partially based on the fact there was no guarantee when the legislative report would be approved within the interior department and by OMB. Many times these reports are finalized well after decisions have been made by Congress on the legislation they involve. As it was, the legislative report to the Senate on the Presidio bill was sent on Dec. 19, 1995, two days before the Senate Energy Committee approved the bill.

152. *See id.*

153. *See Hearing to Review S. 594 and H.R. 1296, Bills to Provide for the Administration of Certain Presidio Properties at Minimal Cost to the Federal Taxpayer and to Review a Map Associated with the San Francisco Presidio Before the Senate Committee on Energy and Natural Resources*, 104th Cong. (Dec. 20, 1995).

there was some understanding that information provided at the hearing might cause some delay. The hearing surfaced additional concerns of the chairman of the committee along with his suggestion that perhaps the park service should consider giving jurisdiction to the trust for almost all areas of the Presidio, including some of the beachfront properties the service had administered for years.¹⁵⁴ The hearing included discussions about the leasing of buildings and current park service operations and questions about how the trust would handle its responsibilities.¹⁵⁵

The information provided by the hearing did not delay the committee's consideration of the bill, which occurred the following day. The bill reported from the energy committee produced mixed results for the park service. While some things had been improved, others were worse than expected.

The Senate was willing to change finding (4) to show that the Presidio was a part of GGNRA; a symbolic point, but one that signaled the intention of the Senate that the area remain part of the park system. The bill retained the creation of the trust outside the Department of the Interior, and kept the House provisions on transferring properties to the trust within 60 days of a request and all property within one year.¹⁵⁶ The Senate bill, however, struck the House provision that would allow the trust to transfer back to the secretary unneeded properties with open space and high public use potential. Senator Dale Bumpers, ranking minority member of the committee, objected strongly to this deletion and said he planned to offer an amendment to put the provision back in the bill.¹⁵⁷ This provision was important to the park service to insure it would continue to manage the natural resources on the property. It also provided some ability for the park service to keep more of the Presidio intact as part of the park system. In the event that the trust failed, only lands and buildings managed by the trust were subject to the bill's reversion provisions.

154. *See id.* at 5.

155. *See id.* at 27-106.

156. *See* S. REP. NO. 104-202, *supra* note 151, at 2.

157. *See id.* at 28.

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The House bill had directed the park service to give the trust any remaining funds of the annual park service appropriation as soon as one property was transferred. The Senate recognized this was unworkable and tied the transfer of funding to the transfer of each piece of property.¹⁵⁸

The Senate bill agreed with its House counterpart that the Presidio would be managed using the "general" objectives of the General Management Plan. And while the trust was directed to adopt a plan for managing the Presidio that was designed to reduce costs to the maximum extent possible, the Senate extended this to require the plan to increase revenues to the federal government to the maximum extent possible.¹⁵⁹ It now appeared through this provision that the Presidio was being mandated only to be a revenue-raising venture regardless of the impact potential tenants would have on the resources of the Presidio and the plan envisioned by the park service.

A specific section was included in the Senate bill requiring the trust to enter into an agreement with the U.S. Park Police to provide law enforcement.¹⁶⁰ This caused some resentment among park rangers who also performed law enforcement functions at the Presidio, but who felt they were not protected from losing their jobs by the bill's provisions.

Finally, the Senate bill gave the trust a bit of a break from the House financial self-sufficiency provisions by requiring the Presidio to become self-sufficient within fifteen years instead of twelve.¹⁶¹

Suggestions for changes to H.R. 1296 that had been raised by the Department of Justice, involving the appointment of members of the trust board and limitations on venue for suits filed against the trust, were not addressed.¹⁶² The park service had preferred having some control over litigation by allowing

158. *See id.* at 3

159. *See id.* at 4

160. *See id.* at 5.

161. *See S. REP. NO. 104-202, supra note 151, at 5.*

162. *See id.* at 24, 26.

suits against the trust to be filed only in the District Court for the Northern District of California. This was mentioned in initial discussions with committee staff before the park service found out about the justice department's objections. The provision limiting suits to the court for the Northern District of California remained in the final bill, despite efforts to remove it after learning of the justice department's concerns.¹⁶³ Additionally, a concern raised by the Department of the Treasury and OMB regarding waiver of the Anti-Deficiency Act, which prohibits the making of expenditures in excess of appropriations, was disregarded by the Senate committee.¹⁶⁴

Now that the Senate committee had approved a bill, it was a question of when it would be considered on the Senate floor. The outlook was not good. Since the first committee meeting of the Senate Energy Committee in the 104th Congress early in 1995, Senator Bill Bradley (D-NJ) had placed a hold on all bills reported by the committee.¹⁶⁵ He did this to prompt consideration of a bill to preserve the Sterling Forest on the New Jersey/New York border, something he had been pursuing for a long time.¹⁶⁶

163. See Omnibus Parks Act, *supra* note 2, at 4103.

164. See S. REP. NO. 104-202, *supra* note 151, at 25-26.

165. Under Senate tradition, any senator can object to proceeding to consideration of a bill on the Senate floor by notifying the Senate leadership. Senate rules do not require disclosure of the name of the senator who objects. In the fall of 1997, however, Senator Ron Wyden (D-OR) offered an amendment to the District of Columbia appropriations bill for FY 1998, to require the disclosure of the names of those senators who have placed holds on any bills within two session days after notifying the leadership of his or her intention to object. While the Wyden amendment passed the Senate, it was dropped from the final bill when the House/Senate conference committee met to resolve differences in the two versions of the bill. See statements of Senator Wyden and Senator Charles Grassley (R-IA) in 143 CONG. REC. NO. 156 S12075-76, and S12103 (daily ed., Nov. 8, 1997).

166. See *Young Muscles Presidio Bill Through with Democratic Help*, Congressional Green Sheets, Environment and Energy Special Report, at 4 (Oct. 22, 1996) (Washington, D.C.: Congressional Green Sheets, Inc.) [hereinafter *Young muscles Presidio Bill*]. Sterling Forest consists of an area of 17,500 acres, approximately 35 miles from New York City along the New Jersey/New York border near Tuxedo, New York. These lands are important for protecting the watershed for the Wanaque and Monkville Reservoir system, which provides household water for a quarter of New Jersey's residents. The land is traversed by a segment of the Appalachian National Scenic Trail administered by the National Park Service. Sterling Forest had been the subject of a number of commercial and residential development proposals.

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To force action on a number of parks and public lands bills that had been reported from the committee, during the spring of 1996, Senator Murkowski decided to use the Presidio bill as a means of passing these languishing measures. He planned to construct a bill with so many popular measures that no senator would object to its consideration. In a letter to Senate colleagues, he announced his intention to combine forty-eight of these bills with the Presidio legislation including the Sterling Forest legislation sponsored by Senator Bradley.¹⁶⁷ Additionally, to gain support from Democrats, he added to the Presidio title the language Senator Bumpers wanted to allow the trust to transfer unneeded open space parcels back to the park service.¹⁶⁸ The committee staff also asked the park service to draft language insuring priority placement of park service employees who might lose their jobs as a result of the creation of the trust, and to allow the park service to continue to use short-term use and occupancy agreements in the interim period before the trust was created to keep buildings occupied and revenues flowing. The language the park service provided on both issues was placed in the substitute amendment to the Presidio bill offered by Senator Murkowski on March 25, 1996.¹⁶⁹

By the time the Senate began debate on the Murkowski substitute, fifty-six bills had been attached to the Presidio legislation, with the potential for even more.¹⁷⁰ Unfortunately, while the Clinton Administration supported most of these titles in the substitute amendment, the president threatened to veto any bill passed by the Senate if it continued to include one title that would designate wilderness in Utah and other titles that the administration did not support.¹⁷¹

167. See letter from Senator Murkowski to all senators (March 14, 1996) (Letter on file with author).

168. See Murkowski Amendment No. 3564, 142 CONG. REC. NO. 42 S2803-30, 2804 (daily ed., Mar. 25, 1996).

169. See *id.* at 2803-04.

170. See 142 CONG. REC. NO. 42 S2741 (daily ed. Mar. 25, 1996).

171. See Statement of Administration Policy on An Amendment in the Nature of a Substitute to H.R. 1296, Mar. 25, 1996. The administration objected to the Utah wilderness provisions because there was too little wilderness designated and the provisions allowed activities, including motor vehicle access, within designated wilderness

Ignoring the administration's veto threat, the Senate started debate on the amended Presidio bill and the Utah wilderness provisions provoked an immediate filibuster by several senators, which went on for five days in late March. The filibuster was led by Senator Bradley, even though his actions threatened the Sterling Forest provisions, which had been included in the Murkowski substitute. The effort to end the filibuster became even more problematic when more titles were proposed for inclusion in the Presidio bill including an amendment by Senator Edward Kennedy (D-MA) to allow for an increase in the minimum wage.¹⁷² When several attempts to break the filibuster were unsuccessful, further consideration of H.R. 1296 was stopped.¹⁷³

Discussions ensued among interested senators and an agreement was reached to drop both the Utah wilderness and Sterling Forest provisions from H.R. 1296. The amended bill passed the Senate on May 1, and the Presidio Trust came closer to enactment.¹⁷⁴

Following Senate action, the administration submitted to Congress a report on the various titles of the expanded H.R. 1296.¹⁷⁵ Among other things, the report restated the park service's concerns about the Presidio reversion language, along with the issues previously raised by the treasury department, OMB, and the justice department, which had been disregarded by the Senate.¹⁷⁶ The park service recognized, however, that

areas that were prohibited or restricted by the Wilderness Act of 1964. Members of the Utah congressional delegation supported designation of approximately 1.8 million acres as wilderness. This figure was based upon the initial inventory done under the Bush Administration where the Bureau of Land Management (BLM) recommended 1.8 million acres for protection. The Utah congressional delegation and the Senate energy committee amended this slightly to bring the total up to 2 million when the bill was added to the Presidio legislation. The environmental community had been advocating that its supporters in Congress protect 5.7 million acres out of approximately 22 million acres of BLM land in Utah.

172. See 142 CONG. REC. NO. 43 S2895 (daily ed. Mar. 26, 1996).

173. See *Young Muscles Presidio Bill*, *supra* note 166.

174. See 142 CONG. REC. NO. 58 S4509 (daily ed. May 1, 1996).

175. See Letter to Honorable Don Young and Honorable Frank Murkowski from Assistant Secretary for Fish and Wildlife and Parks George T. Frampton, Jr. regarding H.R. 1296 (May 22, 1996) (Letter on file with author).

176. See *id.*

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few changes would probably be forthcoming to the Presidio language since it appeared to be the one title in the bill where the House, Senate, and the administration were in more agreement than disagreement, even though the park service found it minimally acceptable.

A brief initial meeting was held by the Senate and House members of the conference committee for H.R. 1296 in late May,¹⁷⁷ but most of the work reconciling the two versions of the Presidio legislation was left to staff. This work went on behind the scenes between the Republican House and Senate staff, but excluded the Democrats and Clinton Administration officials. Reports the park service received from various sources indicated a worsening situation where hundreds of public lands measures were being added to the Presidio bill. This prompted a letter from Secretary Babbitt threatening to recommend a veto of any bill that included objectionable titles.¹⁷⁸

In the first public disclosure of these conference discussions, on July 12, 1996, House Republicans proposed a compromise to the Senate that totaled 421 pages and included ninety public lands bills.¹⁷⁹ Sterling Forest was back in, Utah wilderness was still out, but grazing reform legislation that the administration had opposed was included in the compromise.¹⁸⁰ Addi-

177. See 142 CONG. REC. NO. 74 D529 (daily ed. May 23, 1996). Even though the House-passed bill addressed only the Presidio, most of the other titles added to the Senate version of the Presidio bill had been passed by the House earlier in the 104th Congress as separate bills. Many of these bills were non-controversial and had been approved by the House with language similar to that included in the Senate Presidio bill.

178. See letter to Honorable Don Young from Interior Secretary Bruce Babbitt on H.R. 1296 (June 10, 1996) (Letter on file with author).

179. See *Young Muscles Presidio Bill*, *supra* note 166.

180. The Senate had passed a controversial grazing reform bill, S. 1459, on March 21, 1996, by a vote of 51 to 46. The House Resources Committee had approved a similar bill on April 25, 1996, but it was not brought up for House floor debate. The bills were an attempt to address concerns expressed by those who used the public lands for grazing about new grazing regulations that had been issued the previous year by the interior department. The Clinton Administration felt the legislation was unnecessary given the success of the new regulations and opposed the bills because they severely limited public involvement in public land management, limited the ability of resource professionals to protect the environment, and moved public land management away from the principle of multiple use by exempting livestock operators from the same oversight given to other users of public lands.

tionally, there were a number of highly controversial park bills added, each having prompted threats of presidential vetoes, including the bills to shrink the boundaries of Richmond National Battlefield and Shenandoah National Park.¹⁸¹

The conference committee members made two changes to the Presidio provisions. One change eliminated the role of the Golden Gate National Recreation Area Advisory Commission as a means of assuring public participation with the trust. The other removed the liaison role of the Golden Gate National Park Association with the trust in securing financial support. After the park service and members of the California congressional delegation objected to both of these changes,¹⁸² the conferees made a slight variation to the original provision by saying the trust board “may” establish procedures for providing public information and public comment through the Golden Gate National Recreation Area Advisory Commission. The trust was also “encouraged” to maintain a liaison with the Golden Gate National Park Association.¹⁸³

The proposed bill from the House conference members again drew veto threats from Secretary Babbitt and the president.¹⁸⁴ As the end of the session drew nearer, there was pressure to include as many measures as possible into H.R. 1296. While no official copies were circulated for park service review, at one point it was conveyed that the Presidio legislation included over 125 different titles and as many as 900 pages of text.

In September, House and Senate Republicans offered to remove the grazing reform sections and some others opposed by the Clinton Administration. Controversial provisions remained, however, and Chairmen Murkowski and Young wrote to the president asking for support of the remaining portions of

181. See letter to Honorable Trent Lott from Director Franklin Raines, Office of Management and Budget, on H.R. 1296 (Sept. 25, 1996) (Letter on file with author).

182. See letter to Honorable Don Young from Representative Nancy Pelosi on H.R. 1296 changes proposed by House conferees (July 17, 1996) (Letter on file with author).

183. See Omnibus Parks Act, *supra* note 2, at 4100, 4103.

184. See Letter to Honorable Frank Murkowski from Interior Secretary Bruce Babbitt concerning House offer on H.R. 1296 (July 26, 1996) and letter to Speaker Gingrich from President Clinton on H.R. 1296 (July 26, 1996) (Letter on file with author).

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the bill.¹⁸⁵ This letter again produced a threat of a presidential veto of the bill.¹⁸⁶ Disregarding the threat, the conference committee filed a report anyway,¹⁸⁷ which drew another promise of a veto because of the objectionable titles.¹⁸⁸ Efforts by Chairman Young and Chairman Murkowski to consider the conference report on the House and Senate floors, respectively, were unsuccessful.¹⁸⁹

The prospect for enacting the massive Presidio bill seemed to dim, which led some members of the House Appropriations Committee to consider saving some of the titles important to their members by including those sections in a pending omnibus appropriations bill, H.R. 3610.¹⁹⁰ This, along with prodding from Speaker Gingrich to create a bill that was acceptable to most members and the administration, led Chairman Young, ranking minority member George Miller, and administration officials to craft a new compromise bill, H.R. 4236.¹⁹¹ Most titles unacceptable to the administration were quickly dropped. The park service worked with Hill staff to draft compromise

185. See letter to Honorable William J. Clinton from Chairmen Don Young and Frank Murkowski on H.R. 1296 (Sept. 16, 1996) (Letter on file with author).

186. See letter to Chairman Don Young from Director Franklin D. Raines, Office of Management and Budget (Sept. 20, 1996) (Letter on file with author).

187. See H.R. REP. NO. 104-836 (1996).

188. See letter to Honorable Trent Lott from Director Franklin D. Raines (Sept. 25, 1996), *supra* note 181.

189. See 142 CONG. REC. NO. 136 S11484 (daily ed. Sept. 27, 1996); see *Young Muscles Presidio Bill*, *supra* note 166.

190. Omnibus Consolidated Appropriations Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996). There was consideration of including in this omnibus appropriations act the so-called Mount Hood parks package of interest to Senator Mark Hatfield (R-OR) who was retiring from the Senate at the end of the session, and the San Francisco Bay cleanup proposal, which the Clinton Administration asked to be added. Of most interest to members of Congress, however, was legislation to create several new heritage areas across the country. Heritage areas are places where natural, cultural, historic, and recreational resources combine to form a cohesive, nationally distinctive landscape. Under this concept, the National Park Service provides technical expertise to help with identification of important resources, along with planning for preservation, and interpretation of the resources. The areas are locally managed and controlled, however, and are not part of the National Park System. Since an agreement was finally reached on the Omnibus Parks Act, there was no need to include these heritage areas in the appropriations act. In the final Omnibus Parks Act, there were nine heritage areas created in division II of the act.

191. H.R. 4236, 104th Cong., 142 CONG. REC. NO. 136 H11525 (daily ed. Sept. 27, 1996). For text of bill, see 142 CONG. REC. NO. 139 H12196 (daily ed. Oct. 1, 1996).

language for some of the other titles and a final bill the administration could support was soon ready. The new legislation, which again included the Presidio Trust as Title I with language similar to the Senate version, was passed by the House on September 28 by a vote of 404 to 4.¹⁹²

Senator Murkowski was not pleased that sections important to Alaska were dropped from the new bill, including a provision affecting a logging company in Ketchikan, Alaska.¹⁹³ This delayed passage in the Senate for several days. During this time, Senator Boxer undertook a number of efforts to have Senator Murkowski, other interested senators, and the administration resolve any final issues so the bill could be passed. She went to the Senate floor almost daily to express her concerns about losing this opportunity to pass such an important bill that would benefit so many states.¹⁹⁴ In the end, the Clinton Administration provided a letter to Senator Murkowski concerning a supply of federal timber for the company in Ketchikan to alleviate some of his concerns. Having secured this, Senator Murkowski agreed to let H.R. 4236 proceed, and it was passed by voice vote in the Senate on October 3, during the final hours of the 104th Congress.¹⁹⁵

192. See 142 CONG. REC. NO. 137-Part II H12035 (daily ed. Sept. 28, 1996).

193. Senator Murkowski went to the Senate floor stating that a final agreement could not be reached with the administration until some assurance was given for a timber supply to the three operating sawmills in his state. See 142 CONG. REC. NO. 139 S12091-92 (daily ed. Oct. 1, 1996).

194. See 142 CONG. REC. NO. 137 S11703 (daily ed. Sept. 28, 1996); 142 CONG. REC. NO. 138 S11824-25 (daily ed. Sept. 30, 1996); 142 CONG. REC. NO. 139 S12058-59 (daily ed. Oct. 1, 1996); 142 CONG. REC. NO. 140 S12157-58 (daily ed. Oct. 2, 1996); 142 CONG. REC. NO. 141 S12267 (daily ed. Oct. 3, 1996). The negotiations were difficult because some accommodation had to be made that would not involve changing the text of H.R. 4236 as passed by the House, since any changes made by the Senate would have to go back to the House for final approval and the House had already adjourned for the year.

195. See 142 CONG. REC. NO. 141 S 12363 (daily ed. Oct. 3, 1996). The text of the two letters Senator Murkowski secured from the administration are reprinted in the Senate floor debate on H.R. 4236.

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IX. AN END AND A BEGINNING

After all of this effort, the park service was grateful to have the omnibus bill completed and to have legislation passed to guide the future of the Presidio. Most of the objectionable titles had been removed from the omnibus bill and the park service could live with the Presidio title, even though it was not what originally had been anticipated.

At the end of this legislative process, the park service would get one final surprise with the president's remarks at the bill signing. He said that the Presidio bill "gives us a blueprint for national parks that one day will be able to sustain themselves without Government funds."¹⁹⁶ This was unexpected by the park service, the interior department, and some members of Congress as all had just spent two years saying the Presidio was a unique situation and that the model would not be used in other parks. Some in the environmental community had opposed the creation of the trust exactly because they feared it would be a reason for Congress to require other units of the park system to become self-sustaining thereby lessening the purpose of creating a national system, funded by the taxpayers of this country, for the benefit of future generations. Unfortunately, whoever crafted the president's statement had not given the park service the opportunity to comment beforehand.

In looking back, the park service was placed in somewhat of an unusual position with the Presidio legislation. In most instances, the park service works with Congress to provide information, to answer questions, to discuss alternatives, and to propose solutions for legislation Congress considers for national parks and park programs. With the Presidio bill, the park service was acting as an advocate for an entity that did not exist, and was trying to balance what was good for the park service with what was best for the park. If the trust partnership had been set up as the park service had proposed in the general management plan, it might not have been so difficult to choose what was the best thing to do. However, when Congress

196. Remarks on Signing, *supra* note 1.

created the trust outside the interior department, with no oversight by the park service, the decisions became more difficult as any action that Congress took to favor the trust could adversely affect the goals the park service had for the Presidio.

A review of the final provisions of the legislation will show how Congress balanced these interests. Congress stated clearly in the bill's findings and in a few other places in the bill that the Presidio's preservation was important to the nation and, as such, any property administered by the trust would remain part of the GGNRA — the very legacy Representative Phil Burton had planned and the park service was committed to defending. The park service also received some of the short-term authorities and responsibilities that it asked Congress to grant. The service was allowed to manage leases currently in existence and to extend them for up to six months after the first meeting of the Presidio Trust. While the park service could not issue new leases, it was given the authority to enter into short-term use and occupancy agreements of Presidio properties to insure revenues would continue to flow in the interim, with the proceeds to support Presidio operations.

The park service also was assured its traditional role of providing interpretive services, visitor orientation and educational programs throughout the entire Presidio. Park employees were protected from losing their jobs as a result of the transfer of authority to the trust, and were given priority placement for other jobs within the park service.

The balance tipped in favor of the trust, however, when the long-term authorities were considered. The trust was established outside of the interior department, and was given responsibility for managing all of the Presidio, with the exception of the coastal area already under park service management, and those open space areas that the trust found surplus to its needs. Congress wanted to shift responsibility to the trust as quickly as possible by requiring parcels of land to be transferred within sixty days of a request from the trust, and by requiring all property to be transferred within one year of the board's first meeting. Personal property was included in this

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requirement, along with the funds, leases, and other agreements affecting each parcel of land.

The park service role in the transferred area was greatly diminished. While the trust would be required to manage the Presidio in accordance with the purposes of the national recreation area, it only had to adhere to the general objectives of the general management plan. The work of the park service in creating this plan could easily be disregarded if the trust found it got in the way of achieving its objectives.

The trust was also given more latitude in making contracts, leases, and other agreements for the Presidio than the park service would have had. Procurement regulations were waived except those governing wage rates and working conditions.

With regard to the goal of becoming self-sufficient, the trust was required to develop a comprehensive management program designed to reduce expenditures by the National Park Service and to increase revenues to the maximum extent possible. While the Presidio is unique in the park system, it is the only unit required to maximize revenues. The program developed by the trust would be assisted through the authority to guarantee loans, to make loans to the occupants of properties for their preservation and maintenance, and to borrow funds from the treasury department to fund projects found to be credit worthy. These authorities were also unique to the trust and had not previously been available to the park service.

The good relations the park service had maintained with its friends' groups was continued with the trust being encouraged to maintain a liaison with the Golden Gate National Park Association. The trust also was asked to continue using the Golden Gate National Recreation Area Advisory Commission for providing public information and for receiving public comment on the panoply of issues affecting the Presidio.

Other provisions could benefit both the trust and the park service. For example, the trust will be allowed to retain proceeds received from any sources for the operation and maintenance of Presidio properties. This obviates the need for Con-

gress to appropriate this money, and provides an additional guarantee that the trust will be successful and that the property will remain part of the park system. Any suits filed against the trust were restricted to the District Court for the Northern District of California, making it somewhat simpler to defend such actions. The U.S. Park Police, an arm of the park service, were assured a continuing role for providing law enforcement activities for the entire Presidio.

The reversion provisions were not what the park service requested. If the trust would fail to achieve the goals of its management plan, then property under its control would be disposed of in a manner similar to other base closings. The property would also be deleted from the boundary of the national recreation area. During the course of the legislative process in the 104th Congress, it was not unusual to have congressional staff comment that they recognized the Presidio law would be amended sometime in the future,¹⁹⁷ and that they doubted the reversion provisions would ever be implemented.

Finally, \$25 million was made available each fiscal year for operation of the Presidio until the trust established a plan with decreasing annual appropriations, with the intent that self-sufficiency be achieved within fifteen years.

There is no doubt members of Congress were very interested in preserving the Presidio. The debate was more about the best means of doing so. Congress knew it was taking a chance in creating the Presidio Trust, but it felt this was an experiment worth taking to remove the future funding of the area from the shoulders of the federal government. The transition has already begun and time will tell how the relationship works between the National Park Service and the trust. There

197. The first amendment to the Presidio title occurred less than one year later when Senator Murkowski added an amendment to the FY 1998 Department of the Interior and Related Agencies Appropriations Act, Pub. L. No. 105-83, 111 Stat. 1607, which altered the language involving the salaries that could be paid to the executive director and staff of the Presidio Trust. The effect of the amendment was to allow the trust board to fix whatever compensation they wished for trust officers and employees. Current federal policy places a ceiling on compensation.

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are many opportunities for conflicts and how they are resolved will provide clues as to the viability of this plan and how it will affect the national parks as a whole.

The park service will be watching how the general management plan is implemented or is disregarded. The service will see how its ability to interpret the park's resources and to provide visitor services is accomplished with the trust. The park service also will take care in finding jobs for career employees who are no longer needed at the Presidio.

The trust will feel pressure to have buildings occupied and revenues flowing knowing they are being watched by Congress and annually questioned as to how close they are to achieving financial self-sufficiency. The trust will have to decide how much it operates the Presidio like a business and how much like a park. The trust also will be closely observed in how it interacts with a vocal and active community.

Oversight for the trust will remain largely with Congress and with the Office of Management and Budget through the annual budget process. When disagreements arise between the park service and the trust, they will be resolved by the administration occupying the White House at the time. How the park service mission and values survive will only be known with the passage of time.

X. EPILOGUE

On April 18, 1997, President Clinton appointed the six members of the Presidio Trust Board, who would be joined by Deputy Interior Secretary John Garamendi as the administration's designee.¹⁹⁸ They were sworn in and held the Presidio

198. See Office of the Press Secretary, The White House, Press Release, *President Names Six New Members to the Board of Directors of Presidio Trust* (April 18, 1997); Office of the Secretary, Department of the Interior, Statement of Secretary Babbitt on Appointment of Board of Directors of the Presidio Trust (April 18, 1997). The board members appointed were Edward Blakely, dean of the School of Urban Planning and Development at the University of California; Donald Fisher, founder and chairman of the Gap, Inc.; Amy Meyer, chair of People for the Presidio; Mary Murphy, an attorney with Farella, Braun & Martel in San Francisco; William K. Reilly, visiting professor at

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Trust's first meeting on July 9, 1997. A new chapter in the history of the Presidio had begun.

Stanford University's Institute for International Studies; Toby Rosenblatt, president of the Glen Ellen Company of San Francisco and vice president of Founders Investments Ltd. of Salt Lake City; and, John Garamendi, deputy secretary of the interior, chosen by Secretary Babbitt as his designee on the trust board.