

PRESIDIO TRUST

36 CFR Parts 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008 and 1009

RIN 3212-AA01

Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Proposed rule.

SUMMARY: The Presidio Trust (Trust) was created by Congress in 1996 to manage the former U.S. Army base known as the Presidio, in San Francisco, California. Pursuant to law, administrative jurisdiction of approximately 80 percent of this property was transferred from the National Park Service (NPS), Department of the Interior (DOI), to the Trust as of July 1, 1998. By publication in the **Federal Register** on June 30, 1998 (63 FR 35694), the Trust adopted a final interim rule for interim management of the area under its administrative jurisdiction. This rulemaking proposes to replace that final interim rule in its entirety with the requirements provided herein. Public comment is invited on this proposed rule and will be considered by the Trust in promulgating a final rule.

DATES: Comments on this rulemaking must be received by November 17, 1998.

ADDRESSES: Written comments on this proposed rule must be sent to Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052.

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SUPPLEMENTARY INFORMATION:**Background***I. Introduction*

The Presidio Trust is a wholly-owned government corporation created pursuant to Title I of the Omnibus Parks Public Lands Act of 1996, Public Law 104-333, 110 Stat. 4097 (the Trust Act). Pursuant to sec. 103(b) of the Trust Act, the Secretary of the Interior transferred administrative jurisdiction to the Trust of all of Area B of the former Presidio Army Base, as shown on the map referenced in the statute, on July 1, 1998. Notice of such transfer was published in the **Federal Register** on June 12, 1998 (63 FR 32246).

Section 104(j) of the Trust Act authorizes the Trust, "in consultation with the Secretary [of the U.S. Department of the Interior], to adopt and

to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities" under the Trust Act. Consistent with that authority, and in order to provide for the interim management of the Presidio before more extensive regulations could be promulgated, the Trust promulgated a final interim rule on June 30, 1998 (63 FR 35694) concerning resource protection, public use, and recreation; vehicles and traffic safety; and commercial and private operations. These regulations, which are currently in effect, are contained in 36 CFR chapter X, parts 1001, 1002, 1004, and 1005.

The proposed regulations contained in this document expand upon and revise the final interim regulations. These proposed regulations cover such matters for the Presidio as resource protection, public use, and recreation; vehicles and traffic safety; commercial and private operations; rights-of-way; the need for permits to conduct certain activities; and procedures for implementing the Freedom of Information Act (FOIA), the Privacy Act, and the Federal Tort Claims Act.

Prior to proposing these regulations, the Trust consulted with the Secretary of the Interior, who serves on the Trust's Board of Directors pursuant to sec. 103(c)(1)(A) of the Trust Act, as well as with officials of the Department of the Interior, the National Park Service, and the U.S. Park Police designated by the Secretary of the Interior to facilitate such consultation. The Trust anticipates that such consultation will continue during the comment period on these final interim regulations.

The Trust is providing for a public comment period of 60 days on these regulations. All comments, including names and addresses, when provided, will be placed in the public record and made available for public inspection and copying. The Trust will consider each comment received within this period and then publish final regulations on these topics in the **Federal Register**. That promulgation will include a discussion of any comments received and any amendments made to these proposed regulations as a result of the comments.

II. General Principles of This Rulemaking

The Trust applied three general principles in drafting these proposed regulations.

First, the regulations are designed to deviate as little as necessary from the regulations that applied to the Presidio

during the approximately four-year period in which it was under the administrative jurisdiction of the National Park Service. The current regulations for the Presidio, which were adopted as a final interim rule, are almost identical in substance to those prior regulations.

Second, the regulations are designed to promote comity with the laws and regulations of neighboring jurisdictions. It takes but a matter of minutes by automobile, and only slightly longer by bicycle or on foot, to traverse the four separate jurisdictions of the Presidio Trust Area, the City and County of San Francisco, Marin County, and the Golden Gate National Recreation Area (GGNRA). It is therefore important for the sake of public notice and law enforcement that the Presidio's laws and regulations be consistent with those of its neighboring jurisdictions.

Third, the rules and regulations governing the Presidio Trust's internal operations and the conduct of individuals and businesses in the Presidio are designed to be as simple and clear as possible. Such simplicity and clarity will promote the Trust Act's goal of efficient management of the Presidio, while providing other public benefits.

Each of these principles and its practical application are discussed below.

A. Consistency With Existing Regulations

The primary regulations that governed conduct in the Presidio when it was under the administrative jurisdiction of the NPS are found at 36 CFR parts 1, 2, 4, and 5, and 36 CFR 7.97. These are NPS regulations applicable generally to units of the National Park system (36 CFR parts 1, 2, 4, and 5) and written specifically for the GGNRA (36 CFR 7.97). The Presidio is located within the boundaries of the GGNRA. Trust Act, sec. 103(b). Likewise, the primary regulations that governed administrative matters for the agency administering the Presidio prior to its transfer to the Trust are found at 36 CFR part 14 (NPS regulations concerning rights-of-way), 36 CFR part 11 (NPS regulations concerning use of NPS insignia), 43 CFR part 2 (DOI regulations concerning requests under the Freedom of Information Act and the Privacy Act), and 43 CFR part 22 (DOI regulations concerning claims under the Federal Tort Claims Act).

The Trust prepared the regulations in this document using these prior NPS and DOI regulations as a template. As these regulations were reviewed and modified, the Trust applied a principle

of deviating from these templates only so far as necessary to clarify issues, correct minor errors, and reflect the differences between the Trust's statute, organization, and mission, on the one hand, and those of the NPS and DOI, on the other.

The section-by-section analysis provided below explains in greater detail the changes that are proposed to these source regulations and the reasons for those changes. In general, the Trust is proposing not to adopt those regulations that are simply inapplicable to the Presidio (e.g., snowmobiling rules), those that are intended to promote the effective administration of the much larger NPS and DOI organizations, and those that reflect the different missions of the NPS and the Trust.

In a number of instances, material that is part of the current GGNRA Superintendent's Compendium has been incorporated into these proposed regulations in order to make them clearer and more complete. For example, boating on Lobos Creek and Mountain Lake, the only two bodies of surface water, is prohibited by the GGNRA Superintendent's Compendium. As a result, these proposed regulations simply prohibit boating in the Presidio. See § 1002.13. The current GGNRA Superintendent's Compendium is available for public inspection at the address identified above.

B. Comity With Laws in Neighboring Jurisdictions

The NPS regulations that governed conduct in the Presidio are to a great extent the same regulations that are applicable throughout the various units of the National Park system across the country. Because the parallel regulations of the Trust will apply primarily to conduct in just one locale, the Trust has attempted to tailor these regulations to match local standards and conditions.

Because the prior NPS regulations for the GGNRA address a number of forms of conduct that are also addressed by state law, the Trust in a number of areas faced a choice between adopting the rule from the NPS regulations or allowing the rule provided by California criminal law to be applied through the Assimilative Crimes Act (ACA), 18 U.S.C. 13. In each instance, the Trust analyzed the need for specifically prohibiting conduct in these regulations that is already prohibited under California law. In general, the Trust opted to allow California criminal law to be applied through the ACA to conduct in the Presidio that is not otherwise covered by the Trust's

regulations or policies. The Trust believes that this approach promotes clarity for residents of and visitors to the San Francisco Bay Area, as well as comity with the neighboring jurisdictions of Marin County and the City and County of San Francisco.

It is helpful to understand the legal background for this proposal. As an example, under the NPS regulations at 36 CFR 2.14, littering is prohibited. Littering is also prohibited under California criminal law. Cal. Penal Code sec. 374.4. This criminal prohibition under California law may be applied to conduct occurring on federal lands such as the Presidio through the ACA, 18 U.S.C. 13, but only if such conduct is not already "made punishable by any enactment of Congress * * *." Id.

Courts consider a duly authorized federal regulation an "enactment of Congress" for purposes of the ACA. See, e.g., *United States v. Hall*, 979 F.2d 320, 322 (3d Cir. 1992). If such conduct is already addressed by federal law, only federal law may be applied to the violator. See *Williams v. United States*, 327 U.S. 711, 724 (1946) ("If [the federal agency] had been satisfied to * * * apply local law to this and related offenses it would have been simple for it to have left the offense to the Assimilative Crimes Act."); *United States v. Palmer*, 956 F.2d 189, 192 (9th Cir. 1992) (quoting *Williams* in holding that the NPS cannot enforce state law penalties against driving while intoxicated because there is already an NPS regulation addressing such conduct). As a result, if the Trust were to adopt the NPS regulation against littering, the Trust would not be able to enforce the California law against littering.

The Trust believes that confusion might result from adopting prohibitions on conduct that instead may be prohibited by application of California law through the ACA. There has been a significant number of legal disputes concerning which rule applies in such instances. The U.S. Supreme Court recently provided guidance for answering such questions in *Lewis v. United States*, _____ U.S. _____, 118 S. Ct. 1135 (1998). In this case, the Court articulated a two-part test for determining whether conduct on federal lands may be penalized under state law:

[A] court must first ask the question that the ACA's language requires: Is the defendant's "act or omission * * * made punishable by any enactment of Congress." * * * If the answer to this question is "no," that will normally end the matter. The ACA presumably would assimilate the statute. If the answer to the question is "yes," however, the court must ask the further question

whether the federal statutes that apply to the "act or omission" preclude application of the state law in question, say because its application would interfere with the achievement of a federal policy * * *, because the state law would effectively rewrite an offense definition that Congress carefully considered * * *, or because federal statutes reveal an intent to occupy so much of a field as would exclude use of the particular state statute at issue * * *.

Lewis, 118 S. Ct. at 1141 (citations omitted). The Court went on to recognize that the complexity of state and federal criminal statutes makes it impossible "for a touchstone to provide an automatic general answer to this second question." Id. at 1142.

Executive Order 12988 requires that regulations adopted by the Trust "provide[] a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction * * *." See Executive Order 12988, sec. 3(b)(2)(C). In order to avoid ambiguity, and to make clear to all persons who may enter, work or reside in the Presidio precisely which conduct is prohibited and in what manner violations will be penalized, the Trust has therefore drafted these proposed regulations to prohibit only such conduct as cannot be prohibited by application of state law (e.g., because state law does not proscribe such conduct).

The practical effect of this approach would be to reduce the enumeration of prohibited conduct in these regulations as compared to the NPS regulations. For example, although operating a motor vehicle under the influence of alcohol or drugs is prohibited by the NPS regulations at 36 CFR 4.23, no such prohibition appears in the Trust's regulations. Instead, persons who drive while under the influence of alcohol or drugs in the Presidio would be charged in federal court under the substantive provisions of California law, including its definition of the prohibited conduct and its penalties. They would be apprehended, investigated, and prosecuted, however, according to the procedures of federal law, including, for example, the testing procedures retained in § 1003.7 of these proposed regulations.

Under this approach, the Trust has not incorporated into these proposed regulations the following provisions of existing NPS regulations at 36 CFR:

- 2.4(f) Carrying firearms
- 2.14(a) Sanitation and refuse
- 2.30 Misappropriation of property and services
- 2.31 Trespassing, tampering and vandalism

- 2.34 Disorderly conduct
- 2.35 Alcoholic beverages and controlled substances
- 4.10(c)(3) Headlamps
- 4.12 Traffic control devices
- 4.13 Obstructing traffic
- 4.14 Open container of alcoholic beverage
- 4.20 Right-of-way 4.21(c) Speed limits
- 4.23 Operating under the influence of alcohol or drugs

The Trust's silence on the foregoing issues in these proposed regulations should not be interpreted as expressing any intent not to take such conduct seriously or to vary from its treatment or enforcement under prior law. Rather, by proposing not to incorporate these provisions from the NPS regulations, the Trust is merely looking to California law rather than NPS regulations to provide the applicable rule. The Trust does not anticipate that this will effect any practical change in enforcement or conduct in the Presidio, but instead will result in clearer and more concise regulations, greater notice to the public, and reduced opportunities for legal disputes.

California criminal statutes do not cover all possible forms of misconduct that would impede the efficient management of the Presidio. As a result, the Trust has maintained specific prohibitions in these proposed regulations where the conduct is not addressed by any such criminal statute. For example, it is not against California law to violate the provisions of a permit issued by the Presidio Trust. As a result, the Trust has maintained prohibitions of such conduct that are part of the NPS regulations. See § 1001.6(f).

The Trust's proposed use of the ACA to apply the substantive provisions of California law to criminal conduct in the Presidio in no way diminishes or limits the exclusivity of federal jurisdiction over the Presidio. Under these proposed regulations, State and local laws applicable to such issues as zoning, building permits, land use planning, rent control, property taxes, building codes, and the like will continue to have no applicability to activities of the Presidio Trust or others within the area administered by the Presidio Trust.

To summarize, prohibitions on conduct in the Presidio fall into two categories, and each category has a separate source of penalties for offending conduct in that category. First, conduct made criminal by California law (but not by federal law) would be prohibited in the Presidio by application of the ACA and would be punished according to the substantive

California law. Second, conduct that is not prohibited by California law but that is prohibited directly by these regulations or other federal law would be punished according to applicable federal law. Violations in both categories would be enforced in federal court according to federal procedures.

The Trust believes that this interlocking structure will be clear in application. Residents of California and visitors in California generally expect California law to apply to their conduct throughout the State and are more likely to be aware of the rules that apply to their conduct under California law than under these specific regulations for the Presidio. By applying California law to conduct in the Presidio to the greatest extent possible (where there is no differing federal policy interest), and by avoiding promulgating regulations concerning conduct that is already addressed by California law, the Trust seeks to promote consistency with the laws of neighboring jurisdictions and thereby to reduce confusion on the part of residents of and visitors to the Presidio.

Under sec. 104(i) of the Trust Act, enforcement of these regulations, as well as applicable California law, will be the responsibility of the U.S. Park Police, the federal agency that provides professional law enforcement services for units of the National Park system. The Trust has been informed by the U.S. Park Police that its officers assigned to the GGNRA are familiar with and trained in the application of California state law in addition to the application of federal law and the existing NPS regulations, which these regulations parallel in many respects. As a result, the Trust anticipates no administrative difficulties with respect to the enforcement of these proposed regulations.

The Trust is particularly interested in public comment on this proposal, as it reflects a significant deviation from prior practice within the area now administered by the Presidio Trust. The Trust views the primary alternative to be to promulgate regulations that are much more similar to the prior NPS regulations and the current Trust regulations found at 36 CFR parts 1001, 1002, 1004, and 1005.

C. Simplicity

Although the Trust used the NPS and DOI regulations as templates for these proposed regulations, the Trust sought to simplify and shorten the source regulations to the greatest extent possible, consistent with Executive Orders 12861 and 12988. The Trust did this in four major ways:

First, these proposed regulations do not incorporate those provisions from the NPS and DOI regulations that are simply inapplicable to the Presidio, for example, regulations dealing with snowmobiling or winter activities. Where appropriate, the proposed regulations also reduce the level of detail provided concerning conduct that is unlikely to form a significant part of the user experience in the Presidio, such as hunting and trapping. Because there are no private inholdings within the Presidio, the Trust was also able to avoid incorporating provisions in the source regulations that address such situations.

Second, these proposed regulations consolidate, to the extent consistent with considerations of clarity, certain provisions of the NPS and DOI regulations that are repeated in various places throughout those regulations. For example, each section of the NPS regulations that authorizes the issuance of a permit for a certain activity also notes that violation of the terms and conditions of such a permit is prohibited. Rather than incorporate this phrase repeatedly, these proposed regulations state at the outset (in § 1001.6(f)) that violation of the terms and conditions of any permit issued under these regulations is prohibited.

Third, these proposed regulations reorganize certain of the provisions in the NPS and DOI regulations in order to place regulations on the same general topic near each other. For example, the proposed regulations place the provisions concerning commercial vehicles in the part concerning vehicles and traffic safety instead of in the part concerning commercial operations. They incorporate the specific provisions of 36 CFR 7.97 (regulations applicable only to the GGNRA) into the appropriate areas of the proposed regulations. And they incorporate certain DOI regulations governing commercial photography (43 CFR 5.1) into the portion of these proposed regulations concerning such issues (see § 1004.4).

Fourth, and most important, as part of its goal of simplifying the existing regulations, the Trust also sought with these proposed regulations to promote clarity concerning the internal division of duties and authority, particularly as between the Board of Directors, whose members are not full-time government employees, and the Executive Director and other employees of the Trust.

The primary source of this internal division is § 1001.8, in which the chain of authority is clarified and rules are laid out for appealing decisions to the Board of Directors, or a court of competent jurisdiction. Elsewhere in the

proposed regulations, though, care has been taken to identify the authorized entity for issuing permits or making given decisions, whether that be the Board (generally for issues of policy), the Executive Director (for most specific decisions), or the FOIA or Privacy Act Officers (for matters within their areas of delegated responsibility).

A number of NPS regulations contain the following language: "The regulations contained in this section apply, regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States." These include the following provisions:

- Wildlife protection (36 CFR 2.2(g))
- Fishing (36 CFR 2.3(g))
- Weapons, traps, and nets (36 CFR 2.4(g))
- Fires (36 CFR 2.13(d))
- Property (abandoned property) (portions of 36 CFR 2.22(d))
- Misappropriation of property and services (36 CFR 2.30(b))
- Trespassing, tampering, and vandalism (36 CFR 2.31(b))
- Interfering with agency functions (36 CFR 2.32(b))
- Disorderly conduct (36 CFR 2.34(b))
- Gambling (36 CFR 2.36(b))

These provisions were intended to allow the NPS "to respond to complaints on the private property" within park areas. 48 FR 30252, 30253 (June 30, 1983). Because the areas over which the Presidio Trust has administrative jurisdiction contain no private inholdings, and because these areas are subject to exclusive federal jurisdiction, these provisions are unnecessary and do not appear in these proposed regulations.

The Trust has also retained in these proposed regulations an efficient and effective administrative vehicle used by the NPS in managing its many diverse units. For most of these units, including the GGNRA, the NPS has developed a set of policies, procedures, closures, and designations; for the GGNRA, these are known as the GGNRA Superintendent's Compendium. The Trust has a similar Compendium (adopted on an interim basis) of detailed rules, including supporting determinations, in order to allow the Trust to manage flexibly the diverse demands on the Presidio while protecting its natural and cultural resources, fulfilling the purposes of the Trust Act, and responding to changing conditions. Section 1001.7 of these proposed regulations sets out the procedure for the Trust to follow in maintaining the Compendium and providing public notice of its contents.

Section-by-Section Analysis

The following analysis reviews only those sections of the proposed regulations that are not discussed elsewhere, in more general terms, in this preamble. Nevertheless, not every substantive change is discussed in this preamble. As discussed above, because these proposed regulations are modeled on existing regulations of the NPS and DOI, this analysis focuses on differences between these regulations and the existing regulations of these agencies.

Part 1001 General Provisions

Section 1001.1 Purpose

In modeling these proposed regulations on the existing regulations of the NPS and DOI, the Trust consistently changed a variety of terms used in the existing regulations as appropriate to the Trust and its separate mission, organization and statutory authority. This section reflects two of those general changes. First, references to the "National Park Service" or "Department" were changed to "Presidio Trust." And second, references to "the purposes for which a park unit is managed" or similar language were changed to "the purposes of the Presidio Trust Act." Elsewhere in these proposed regulations, references to the "Superintendent" or the "Secretary" were changed to the "Executive Director" or the "Board" as appropriate.

Section 1001.2 Applicability and Scope

This section had its origin in 36 CFR 1.2 and 4.1. As discussed above, § 1001.2(d) addresses the applicability of certain provisions of State and local law under the Assimilative Crimes Act, 18 U.S.C. 13. This section also includes a savings provision to eliminate any possibility of confusion about the Federal government's retention of exclusive federal jurisdiction, through the Trust, over the Presidio.

Section 1001.3 Enforcement and Penalties

This provision is discussed in greater detail above. As required by the Trust Act, at sec. 104(i), the Trust has entered into a memorandum of agreement for law enforcement in the areas under its administrative jurisdiction to be performed by the United States Park Police. Officers of the U.S. Park Police have the same authority within the Presidio as in the rest of the GGNRA.

Section 1001.4 Definitions

This section was substantially revised to incorporate definitions that are

generally applicable to most of the regulations published today and to delete those definitions that were no longer needed as a result of other differences between the source regulations and these proposed regulations. They were also revised to reflect the applicability of these regulations solely to the Presidio, which is in California, and not to other park units, which are in other States as well.

The definition of "authorized person" was changed to "authorized law enforcement officer," since the Trust anticipates that the individuals who will be authorized to perform the functions identified with this term in the regulations will generally be law enforcement officers (most likely members of the U.S. Park Police force or State or local law enforcement officials authorized by the Presidio Trust to perform duties in the Presidio under certain circumstances).

The terms "Board," "Executive Director" and "General Counsel" were added, along with a provision including their designees in the definition. This is intended to provide senior officials of the Trust with the flexibility to delegate responsibilities and authority as appropriate to carry out the purposes of the Trust Act.

The terms "commercial passenger vehicle" and "commercial vehicle" were defined in this section based on definitions contained in 36 CFR 5.4 and 5.6, respectively. The regulations to which these definitions apply (§§ 1003.12 and 1003.13) are accordingly more concise and clear.

The distinction between "developed areas" and "non-developed areas" has been dropped from the definitions and from these proposed regulations because the Presidio is located in an urban area in which the activities allowed under the NPS regulations in "non-developed areas" are generally inappropriate.

The term "Presidio Trust Area" was defined as the real property over which the Presidio Trust has administrative jurisdiction. The term "Presidio" historically applies to property over which the U.S. Army once had administrative jurisdiction. Portions of this property will continue to be administered by the NPS as part of the GGNRA.

The term "printed matter" is defined in this section generally to exclude items of merchandise. This corresponds to the definition of the term used by the NPS in its Special Directive 95-11 interpreting its regulation at 36 CFR 2.52 concerning sale or distribution of printed matter. The Trust believes it is appropriate to incorporate this

definition directly into its regulations for the sake of clarity and public notice.

The term "residential dwelling" is defined because the Presidio currently houses and is expected to house numerous individuals and families. Although the precise extent of each private dwelling or leasehold will be established by the document granting occupancy, the Trust believes it is useful for law enforcement purposes to state a general definition of this term.

Section 1001.5 Closures and Public Use Limits

This section deviates only slightly from the NPS regulation at 36 CFR 1.5. The NPS regulation specifies a variety of criteria to be considered in reviewing the need for closures and public use limits. Because the Trust Act provides additional criteria, and because the Trust cannot foresee all possible circumstances necessitating closures or public use limits, these criteria have been made more general.

Section 1001.5(d) contains an added provision specifying the Trust's ability to charge fees for permits. The Trust Act, sec. 105(b), requires that the Trust become "self-sufficient" within 15 years, and these fees are a likely revenue source to offset the costs of administering the Presidio. References to fees for permits for filming and for serving alcohol have been deleted in the appropriate provisions because they are covered by this more general authority.

Section 1001.6 Permits

This section makes explicit the requirement that the Trust consider impacts on tenants and neighbors of the Presidio in making decisions on requests for permits. Unlike most national parks, the Presidio is located in a densely populated urban area, and numerous individuals live and work in the Presidio. These impacts are entitled to consideration by the Trust in its management of the Presidio.

Section 1001.7 Public Notice and Comment

The provisions added to this section make more explicit the duties of the Trust both to maintain a Compendium that provides notice to the affected public of the specific designations, closures, and permit requirements adopted by the Trust and to involve the Golden Gate National Recreation Area Advisory Commission (often referred to as the Citizens Advisory Commission or CAC) in policy, planning and design issues, in accordance with sec. 103(c)(6) of the Trust Act.

Section 1001.8 Review and Final Agency Action

This section establishes general procedures for review of delegated decisions. Decisions of the Executive Director or his or her designee may be appealed to the Board of Directors. In practice, where the Executive Director's delegation of authority so provides, there will likely be a preliminary step in which decisions of a designee of the Executive Director are reviewed by the Executive Director. The time periods that are set for these reviews are the shortest periods that the Trust believes are feasible in light of both the part-time nature of its Board members' service and the likely frequency of Board meetings.

This section also establishes a bright line rule for determining whether the Trust has taken final agency action. The Trust has established this rule in accordance with the President's call for the adoption of "clear legal standard[s]" and specification of what is required for a person aggrieved to exhaust their administrative remedies prior to seeking court review of the agency's action. See Executive Order 12988, sec. 3(b)(2).

Part 1002 Resource Protection, Public Use and Recreation

Section 1002.2 Wildlife Protection

Hunting and trapping are prohibited in the Presidio under current law. Fishing is also prohibited in the Presidio under the GGNRA Superintendent's Compendium. This section maintains these prohibitions. The GGNRA Superintendent's Compendium prohibits the viewing of wildlife with artificial light. These proposed regulations adopt this prohibition, but provide for the possibility that such viewing will be permitted (e.g., incidental to commercial filming) on terms and conditions established by the Board.

Section 1002.5 Camping and Food Storage

Because there are no bears in the Presidio, the requirement for suspension of food on bear poles has been deleted.

Section 1002.9 Sanitation and Refuse

As discussed above, the specific prohibition on littering in the NPS regulation has been removed in favor of reliance on state law. Similarly, the specific prohibitions on polluting have also been removed in favor of reliance on other federal law.

Section 1002.10 Pets

The exception in the NPS regulations for guide dogs accompanying persons

with visual or hearing impairments has been expanded to include service dogs accompanying persons with disabilities, regardless of the disability requiring the use of a service dog.

Section 1002.11 Horses and Pack Animals

This regulation has been revised to state more concisely the general requirement that use of horses and pack animals in the Presidio be restricted to designated areas and trails, or under the terms and conditions of a permit (e.g., for a parade). It has also been revised to make clear that these requirements do not apply to law enforcement officers in the performance of their official duties.

Section 1002.13 Swimming and Boating

The GGNRA Superintendent's Compendium prohibits swimming, boating and the use of any water vessel on the bodies of water located within the Presidio. This regulation continues that prohibition.

Section 1002.15 Smoking

This regulation has been revised in accordance with the general approach of these proposed regulations to correspond, as nearly as possible, to conditions under State law.

Section 1002.16 Property

The Trust has reduced the general length of time that property may be left unattended without a permit or in designated areas from 24 hours to 12 hours. The purpose of this revision is to provide the Trust with greater ability to manage the area under its jurisdiction more closely.

Section 1002.23 Special Events

The requirement that applications for permits for special events be presented to the Trust at least 72 hours in advance has been extended to seven days in order to allow the time necessary for coordination of permit requests with the NPS in its management of the GGNRA. The Trust expects to continue to direct applicants for permits for activities in the Presidio to the Special Park Uses Office of the GGNRA, located at Building 201, Fort Mason, San Francisco 94123, telephone: (415) 561-4300, which is open between the hours of 9 a.m. and 5 p.m. on working days. This office will centralize the administrative process for permit applications for both the areas under the jurisdiction of the NPS and the Presidio Trust. Decisions concerning permit applications for activities on property administered by the Trust will be made by the Trust; those for activities on

properties administered by the NPS will be made by the NPS. The Trust anticipates that the NPS and the Trust will consult cooperatively concerning permit applications that will affect activities on the property administered by either or both agencies.

Part 1003 Vehicles and Traffic Safety

Section 1003.3 Travel on Presidio Trust Area Roads and Designated Routes

This regulation has been revised from the existing NPS regulation in accordance with the general principle discussed above concerning application of State law through the ACA. It also deletes the reference to Executive Order 11644 contained in the existing NPS regulation. This Executive Order, which concerns use of off-road vehicles on the public lands, does not apply to public lands administered by the Trust. Nevertheless, the Trust anticipates that it will address use of off-road vehicles in the Presidio in a manner consistent with Executive Order 11644, as amended by Executive Orders 11989 and 12608.

Section 1003.10 Powerless Flight

Under 36 CFR 7.97 and the GGNRA Superintendent's Compendium, powerless flight is prohibited in the Presidio. This section maintains that prohibition.

Section 1003.11 Parking

The existing NPS regulations do not cover parking explicitly. Although the Trust would have authority to manage motor vehicle parking under other portions of these regulations (e.g., § 1001.5), this section has been incorporated in order to provide clarity and better public notice concerning parking issues.

Section 1003.12 Commercial Passenger Vehicles

The provisions of this section, and those of the following section, condense the existing NPS regulations and prohibitions and conditions in the GGNRA Superintendent's Compendium concerning buses and trucks. The intention has been to maintain the status quo with respect to treatment of these vehicles in the Presidio until such time as the Trust may adopt different conditions or routes in its Compendium.

Section 1003.13 Commercial Vehicles

See discussion of § 1003.12, above.

Section 1003.14 Safety Belts

Although California has a law concerning safety belt and child restraint requirements, that law does not

apply to all occupants of a motor vehicle. The federal government has a strong public policy of encouraging and in some cases requiring the use of safety belts and child restraints by all occupants of a motor vehicle. See Executive Order 13043 (April 16, 1997). As a result, the Trust has opted in these proposed regulations to adopt a rule on safety belt use that is consistent with the current rule of the NPS at 36 CFR 4.15.

Part 1004 Commercial and Private Operations

Section 1004.1 Signs and Advertisements

This section contains the same requirements as the existing NPS regulation concerning commercial notices, while also adding a specific provision on other signs. Although the Trust has authority to manage signage in the Presidio under other portions of these regulations (e.g., § 1001.6), this section has been incorporated in order to provide clarity and better public notice concerning signage issues.

Section 1004.2 Alcoholic Beverages; Sale of Intoxicants

This section deletes the provision in existing NPS regulations for appeals of decisions on permits to sell alcoholic beverages, since such appeals are now provided for under § 1001.8. It also deletes the provision allowing for fees for alcohol permits, since such fees are now provided for under § 1001.5(d).

Section 1004.4 Commercial Photography

This section is adapted from both 36 CFR 5.5 and 43 CFR 5.1, which have been consolidated and simplified to apply specifically to the operations of the Presidio Trust. The precise form of permit application has been deleted from the regulations and will be developed by the Trust, in consultation with the NPS, as the Trust acquires experience with permitting film projects. The Trust intends to charge fees for such permits, in accordance with its statutory mandate to become financially self-sufficient within 15 complete fiscal years. See § 1001.5(d).

Section 1004.6 Discrimination in Employment Practices

This section exempts governmental agencies or instrumentalities from the Trust's specific non-discrimination requirements because such entities are almost uniformly covered by similar requirements. This section adds the terms "restaurant" and "recreational facility" to the list of covered accommodations in order to clarify that such facilities are also covered. In order

to be consistent with the principle of Executive Order 13087 (May 28, 1998), 63 FR 30097 (June 2, 1998), as well as to promote comity with laws and policies of neighboring jurisdictions, the Trust has added the category of "sexual orientation" to the list of prohibited bases for discrimination under this section.

Section 1004.7 Discrimination in Furnishing Public Accommodations and Transportation Services

See discussion of § 1004.6, above.

Part 1005 Rights-of-Way

This proposed part sets forth general terms and conditions, as well as the procedures that the Trust will follow, in issuing rights-of-way. This part has been simplified significantly from the NPS regulation at 36 CFR part 14. The Presidio Trust is not subject to the variety of statutes concerning rights-of-way over lands administered by the NPS. Furthermore, unlike many units of the National Park System, the Presidio does not have any private inholdings. As a result, the Trust intends to issue rights-of-way only to a limited number of entities, consistent with the purposes of the Presidio Trust Act, and only on written terms and conditions and for payment of monetary compensation.

Section 1005.5 Terms and Conditions

This section provides that the Trust, as a wholly-owned government corporation with ability to retain funds it collects, is the entity to be indemnified by the holders of rights-of-way over lands administered by the Trust. Section 1005.5(b) has been revised to be more general with respect to the obligations of the holder of a right-of-way, while continuing to cover the specific items covered by 36 CFR 14.9(b). Section 1005.5(g) has been expanded to include requirements for permission before trees may be cut and to require that any trees destroyed be replaced in kind. Additional categories on which discrimination is prohibited have been added to § 1005.5(k) in order to make it consistent with §§ 1004.6 and 1004.7 of this chapter.

Section 1005.11 Disposal of Property on Termination of Right-of-way

This section clarifies that the Trust will not be liable for any claim for damages on account of removal and restoration work required by termination of a right-of-way.

Part 1006 Presidio Trust Symbols

This part is adapted from NPS regulations at 36 CFR part 11. The Presidio is a unique location, and the

Trust intends to manage it in such a way as to increase the value of the property to the public, as well as the price that tenants are willing to pay for the benefits of being located in the Presidio. Consistent with this effort, this part is intended to protect the terms "Presidio" and "Trust," as well as such symbols and insignia as the Trust may adopt for its own use, from commercial uses that are inconsistent with the purposes of the Presidio Trust Act. The Trust recognizes that certain entities may have already acquired rights in these terms under existing laws, and nothing in this regulation is intended to abrogate any such rights.

Part 1007 Requests Under the Freedom of Information Act

Section 1007.4 Preliminary Processing of Requests

In § 1007.4(b)(2), the reference to Executive Order 12356 from 43 CFR 2.15(c)(2) was removed because this order was revoked by Executive Order 12958. The basis for the reference to Executive Order 12356 in the DOI regulations appears to have been sec. 4.1(d) of that order, which states in pertinent part:

Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency.

Executive Order 12958 contains a similar provision at sec. 4.2(b), which states in pertinent part:

Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization.

The proposed regulation therefore retains the requirement that requests for classified information be forwarded for determination by the agency originating the classification.

Section 1007.5 Action on Initial Requests

The DOI regulations do not contain provisions concerning expedited processing. In order to conform to recent amendments to FOIA, the Trust is proposing special provisions concerning expedited processing in the circumstances enumerated by FOIA at 5 U.S.C. 552(a)(6)(E).

Section 1007.8 Action on Appeals

The Presidio Trust Act specifies at sec. 104(h) that "[t]he District Court of

the Northern District of California shall have exclusive jurisdiction over any suit filed against the Trust." As a result, this court is specified in the regulations as the court in which any appeal of the Trust's determination concerning a FOIA request must be filed.

Section 1007.9 Fees

The DOI regulations provide for set charges for FOIA requests that are published in an appendix to the regulations. In order to promote clarity and reduce administrative burdens on the Trust, the Office of the Federal Register, and requesters, the Trust has opted in § 1007.9(a)(1) to publish such charges in the Compendium required under § 1001.7. In accordance with FOIA and with sec. 7 of OMB's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (Mar. 27, 1987), which were promulgated under FOIA, 5 U.S.C. 552(a)(4)(A)(i), the Trust will set these charges only as high as necessary to "recoup the full allowable direct costs" incurred by the Trust in responding to FOIA requests.

The DOI regulations provide that fees will not be charged if they do not exceed \$15.00. Under FOIA, 5 U.S.C. 552(a)(4)(A)(iv)(I), fees are not charged "if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee." Rather than set a precise amount in these regulations, which will need to be altered as these costs vary over time, the Trust has instead incorporated the statutory policy into these regulations at § 1007.9(a)(2), along with a requirement, for the sake of public notice, that the precise dollar figure be published in the Compendium called for under § 1001.7 of these regulations.

The OMB Guidelines suggest that agencies charge for the full costs of providing services that are not required under FOIA, such as certifying that records are true copies or sending records by express mail, should the Trust elect to provide such services. Although the Trust's willingness to provide such services will be contingent on its available resources, the Trust has incorporated this suggestion into these regulations at § 1007.9(a)(4) in order to clarify that such services will not be provided free of charge.

Sections 1007.9(b)(1) and (e)(1) require commercial use requesters and requesters that do not belong to other enumerated categories to pay for the Trust's costs in searching for documents covered by the FOIA request. The OMB Guidelines referred to above suggest (at sec. 9(b)) that agencies "give notice in their regulations that they may assess

charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure." The Trust has done this by noting parenthetically in these sections that costs for "search" (as well as "review" for commercial requesters) are charged "even if the search ["and review" for commercial requesters] fails to locate records that are not exempt from disclosure."

In § 1007.9(k), the reference to 4 CFR parts 101–105 in the existing DOI regulations has been removed from this provision because these regulations are coextensive with the entire body of "[o]ther authorities of the Debt Collection Act of 1982" under which the Trust may collect fees due and owing.

Section 1007.10 Waiver of Fees

The DOI regulations at 43 CFR 2.21(a)(2) contain a list of factors to be considered in determining whether a Freedom of Information Act request falls into the categories for partial or complete waiver of fees under 5 U.S.C. 552(a)(4)(A)(ii)(III). In light of the types of requests that the Trust is likely to receive, as well as the purposes of the Trust Act, the Trust does not consider it necessary to enumerate these factors in order to comply with FOIA.

The DOI regulations at 43 CFR 2.21(b) also contain a list of circumstances in which the agency will make copies available without charge. The OMB Guidelines promulgated under FOIA provide (at sec. 7) that "[a]gencies should charge fees that recoup the full allowable direct costs they incur." The only exceptions to this requirement are for disclosures in the public interest under 5 U.S.C. 552(a)(4)(A)(iii) and for those fees which are lower than the costs of collecting them. The circumstances identified in sec. 2.21(b) of the DOI regulations are likely to be covered by one or both of these authorized exceptions, and as a result, these regulations do not enumerate the specific circumstances for discretionary fee waivers.

FOIA provides that, when fee waivers are granted, documents shall be furnished "without any charge or at a charge reduced below the fees established" by the agency. 5 U.S.C. 552(a)(4)(A)(iii). The Trust is proposing in these regulations to reduce otherwise applicable fees by 25% in most circumstances, while providing discretion for additional reductions, including complete waivers, in appropriate circumstances.

Part 1008 Requests Under the Privacy Act

Section 1008.6 *Assuring Integrity of Records*

The DOI regulations at 43 CFR 2.51(b) through (e) specify precise precautions to be taken to protect records covered by the Privacy Act. Rather than limit the discretion of the Trust official responsible for maintaining adequate precautions, these regulations state a general standard of security for all such records based on their relative sensitivity.

Section 1008.12 *Requests for Notification of Existence of Records: Action On*

In § 1008.12(b), the Trust has added a requirement for consultation with the General Counsel in order to ensure proper legal review at the earliest appropriate stage before action is taken on a request. For the same reason, this requirement has been added to § 1008.15(b) concerning requests for access to records and § 1008.20(b) concerning petitions for amendment. The requirement for consultation with the organization's top attorney regarding appeals of such decisions has also been retained.

Section 1008.15 *Requests for Access to Records: Initial Decision*

Under § 1008.15(d), the Trust anticipates charging fees for Privacy Act requests on the same schedule as for FOIA requests, which will be published in the Compendium provided for under § 1001.7.

Part 1009 Administrative Claims Under the Federal Tort Claims Act

This part sets forth the procedures that the Trust will follow in processing any claims presented to it under the Federal Tort Claims Act (FTCA), which applies to the Trust and its directors, officers, employees, and agents. Under Department of Justice regulations implementing the claims procedure for the FTCA, the Trust is authorized to establish procedures that are consistent with the Department of Justice procedures. See 28 CFR 14.11. DOI has promulgated regulations under this authority at 43 CFR part 22, and the Trust has looked to those regulations in drafting its own.

These regulations delete in their entirety the provisions of 43 CFR 22.2, which simply restate the statute. The regulations nevertheless incorporate the citation from 43 CFR 22.2(g) into § 1009.1 of these regulations in order to provide a useful reference to the Federal Tort Claims Act.

Regulatory Impact

This proposed rulemaking will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. This proposed rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of this proposed rule. Because this proposed rule is not "economically significant," it is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this proposed rule is not a "major rule" under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.* The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this proposed rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities.

Environmental Impact

The Presidio Trust has prepared an Environmental Assessment (EA) in connection with this proposed rule. The EA determined that this proposed rule will not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Presidio in any significant manner.

As a result, the Trust has issued a Finding of No Significant Impact (FONSI) concerning these final interim regulations and has therefore not prepared an Environmental Impact Statement concerning this proposed action. The EA and the FONSI were prepared in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), and regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA, 40 CFR parts 1500–1508.

Both the EA and the FONSI are available for public inspection at the offices of the Presidio Trust, 34 Graham Street, The Presidio, San Francisco, CA 94129, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Paperwork Reduction Act

The information collection requirements of this proposed rule are no more extensive than those of the existing NPS regulations, which have previously been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. These information collection requirements are contained in 36 CFR 1001.5, 1001.6, 1002.4, 1002.7, 1002.12, 1002.19, 1002.22, 1002.23, 1002.24, 1002.25, 1002.27, 1002.28, 1003.2, 1003.4, 1003.12, 1004.1, 1004.2, 1004.3, 1004.4, 1004.5, and 1004.8. This information is being collected to provide the Executive Director with data necessary to issue permits for special uses of the Presidio Trust Area and to obtain notification of accidents that occur within the Presidio Trust Area. This information will be used to grant administrative benefits and to facilitate prompt emergency response to accidents. In 36 CFR 1002.19 and 1003.2, the obligation to respond is mandatory; in all other sections the obligation to respond is required in order to obtain a benefit.

Other Applicable Authorities

The Presidio Trust has drafted and reviewed these proposed regulations in light of Executive Order 12988 and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that order.

List of Subjects

36 CFR Part 1001

Administrative practice and procedure, National parks, Penalties, Public lands, Recreation and recreation areas.

36 CFR Part 1002

National parks, Public lands, Recreation and recreation areas, Signs and symbols.

36 CFR Part 1003

Bicycles, National parks, Public lands, Recreation and recreation areas, Traffic regulations.

36 CFR Part 1004

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Pets, Public lands, Recreation and recreation areas, Transportation.

36 CFR Part 1005

National parks, Public lands, Public lands-rights-of-way, Recreation and recreation areas, Rights-of-way.

36 CFR Part 1006

National parks, Public lands, Recreation and recreation areas, Seals and insignia, Signs and symbols.

36 CFR Part 1007

Administrative practice and procedure, Freedom of information, Records.

36 CFR Part 1008

Administrative practice and procedure, Privacy, Records.

36 CFR Part 1009

Administrative practice and procedure, Tort claims.

Dated: September 9, 1998.

James E. Meadows,
Executive Director.

Accordingly, the Presidio Trust proposes to revise 36 CFR Parts 1001, 1002, 1004, and 1005, and to add 36 CFR Parts 1003, 1006, 1007, 1008, and 1009, as set forth below:

CHAPTER X—PRESIDIO TRUST*Part*

- 1001 General provisions
- 1002 Resource protection, public use and recreation
- 1003 Vehicles and traffic safety
- 1004 Commercial and private operations
- 1005 Rights-of-way
- 1006 Presidio Trust symbols
- 1007 Requests under the Freedom of Information Act
- 1008 Requests under the Privacy Act
- 1009 Administrative claims under the Federal Tort Claims Act

PART 1001—GENERAL PROVISIONS*Sec.*

- 1001.1 Purpose.
- 1001.2 Applicability and scope.
- 1001.3 Enforcement and penalties.
- 1001.4 Definitions.
- 1001.5 Closures and public use limits.
- 1001.6 Permits.
- 1001.7 Public notice and comment.
- 1001.8 Review and final agency action.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1001.1 Purpose.

(a) The regulations in this chapter provide for the proper use, management, government, and protection of persons, property, and natural and cultural resources within the Presidio Trust Area.

(b) The regulations in this chapter will be utilized to fulfill the purposes of the Presidio Trust Act.

§ 1001.2 Applicability and scope.

(a) Except as otherwise specified herein, the regulations in this chapter apply to all persons entering, using,

visiting, or otherwise within the boundaries of the Presidio Trust Area.

(b) The regulations in this chapter apply, regardless of land ownership or possession, on all lands and waters within the Presidio Trust Area.

(c) The regulations in parts 1002, 1003 and 1004 of this chapter shall not be construed to prohibit activities conducted by the Presidio Trust or its agents in accordance with the Presidio Trust Act and approved policies of the Presidio Trust or in emergency operations involving threats to life, property, or resources of the Presidio Trust Area.

(d) Unless specifically addressed by regulations in this chapter or authorized, permitted, prohibited or undertaken by or at the direction of the Trust, conduct within the Presidio Trust Area is governed by the provisions of State law that are now or may later be in effect, to the extent that such may be applied pursuant to the Assimilative Crimes Act, 18 U.S.C. 13.

(e) Nothing in this chapter shall be construed as providing jurisdiction over the Presidio Trust Area in any way to any entity other than the Presidio Trust.

§ 1001.3 Enforcement and penalties.

Violation of any regulation contained in this chapter, violation of the terms and conditions of any permit issued in accordance with this chapter, and/or failure to abide by area designations and conditions established in accordance with this chapter is prohibited, may result in the suspension or revocation of the permit and the denial of future permits by the same applicant, and may subject the violator to a fine or imprisonment as provided by law, as well as such other penalties as are provided by law, in addition to costs of the proceedings and compensation for damages to property.

§ 1001.4 Definitions.

The following definitions shall apply to this chapter, unless modified by the definitions for a specific part or regulation:

Administrative activities means those activities conducted under the authority of the Presidio Trust for the purpose of safeguarding persons or property, implementing management plans and policies, repairing or maintaining government facilities, or otherwise promoting the purposes of the Presidio Trust Act.

Aircraft means a device that is used or intended to be used for human flight in the air, including powerless flight.

Archeological resource means material remains of past human life or activities that are of archeological

interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found, or human skeletal materials or graves.

Authorized emergency vehicle means a vehicle in official use for emergency purposes by a Federal agency or an emergency vehicle as defined by California law.

Authorized law enforcement officer means a law enforcement officer duly authorized by the Presidio Trust or other competent governmental authority to enforce applicable law in the Presidio Trust Area.

Bicycle means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels, except a manual wheelchair.

Board means the Board of Directors of the Presidio Trust or its designee.

Camping means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

Carry means to wear, bear, or have on or about the person.

Chair means the Chair of the Board of Directors of the Presidio Trust or, if there is no Chair, then the Acting Chair of the Board of Directors of the Presidio Trust.

Commercial passenger vehicle means a bus, motor coach, van or other vehicle capable of seating seven or more passengers, when used in transporting passengers for a fee or profit (other than bona fide sharing of actual expenses), either as a direct charge to another person, or otherwise, or used in connection with any business, but excepting pleasure type vehicles rented without a driver for general use at a charge based on time or mileage or both.

Commercial vehicle means a truck, station wagon, pickup, passenger car or other vehicle when used in transporting movable property for a fee or profit, either as a direct charge to another person, or otherwise, or used as an incident to providing services to another person, or used in connection with any business.

Cultural resource means material remains of past human life or activities that are of significant cultural interest and are less than 50 years of age. This

term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

Downed aircraft means an aircraft that cannot become airborne as a result of mechanical failure, fire, or accident.

Executive Director means the Executive Director of the Presidio Trust or his or her designee.

Firearm means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

Fish means any member of the subclasses Agnatha, Chondrichthyes, or Osteichthyes, or any mollusk or crustacean found in salt water.

Fishing means taking or attempting to take fish.

FOIA means the Freedom of Information Act, 5 U.S.C. 552.

FOIA Officer means the employee designated by the Executive Director to process FOIA requests and otherwise supervise the Presidio Trust's compliance with FOIA, or the alternate employee so designated to perform these duties in the absence of the FOIA Officer.

General Counsel means the General Counsel of the Presidio Trust or his or her designee.

Hunting means taking or attempting to take wildlife, except trapping.

Manual wheelchair means a device that is propelled by human power, designed for and used by a mobility-impaired person.

Motor vehicle means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated on rails or upon water, except a motorized wheelchair.

Motorized wheelchair means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion, that is both capable of and suitable for use in indoor pedestrian areas.

Net means a seine, weir, net wire, fish trap, or other implement designed to entrap fish, except a hand-held landing net used to retrieve fish taken by hook and line.

Operator means a person who operates, drives, controls, otherwise has charge of or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

Pack animal means a horse, burro, mule or other hoofed mammal.

Pedestrian means a person walking or a mobility-impaired person using a manual or motorized wheelchair.

Permit means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Person means an individual, firm, corporation, society, association, partnership, or private or public body.

Pet means a dog, cat or any animal that has been domesticated.

Possession means exercising direct physical control or dominion, with or without ownership, over property, or archeological, cultural or natural resources.

Presidio Trust and *Trust* mean the wholly-owned federal government corporation created by the Presidio Trust Act.

Presidio Trust Act or *Trust Act* means Title I of Public Law 104-333, 110 Stat. 4097, as the same may be amended.

Presidio Trust Area means all property, lands and waters under the administrative jurisdiction of the Presidio Trust.

Presidio Trust Area road means the main-traveled surface of a roadway open to motor vehicles, owned, controlled or otherwise administered by the Presidio Trust.

Printed matter means message-bearing textual printed material such as books, pamphlets, magazines, and leaflets, and does not include other forms of merchandise, such as posters, coffee mugs, audio or videotapes, T-shirts, hats, shorts, sunglasses, ties, and other clothing articles.

Public use limit means the number of persons; number and type of animals; amount, size and type of equipment, vessels, mechanical modes of conveyance, or food/beverage containers allowed to enter, be brought into, remain in, or be used within a designated geographic area or facility; or the length of time a designated geographic area or facility may be occupied.

Refuse means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid waste, feces, or other discarded materials.

Residential dwelling means a fixed housing structure and such land appurtenant thereto which is either the principal residence of its occupants, or is occupied on a regular and recurring basis by its occupants as an alternate residence or vacation home, and which is under the possession of a private individual pursuant to a lease.

Services means, but is not limited to, meals and lodging, labor, professional services, transportation, admission to exhibits, use of telephone or other

utilities, or any act for which payment is customarily received.

Smoking means the carrying of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

State means a State, territory, or possession of the United States.

State law means the laws, statutes, regulations, and codes of the State of California that are applicable to conduct within the State of California and that do not conflict with Federal laws and regulations, including the Presidio Trust Act and the regulations in this chapter.

Take or *taking* means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

Traffic means pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for purpose of travel.

Traffic control device means a sign, signal, marking or other device placed or erected by, or with the concurrence of, the Executive Director for the purpose of regulating, warning, guiding or otherwise controlling traffic or regulating the parking of vehicles.

Trap means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

Trapping means taking or attempting to take wildlife with a trap.

Unloaded, as applied to weapons and firearms, means that:

(1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm;

(2) A muzzle-loading weapon does not contain gun powder in the pan, or the percussion cap is not in place; and

(3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

Vehicle means every device in, upon, or by which a person or property is or may be transported or drawn on land, except devices moved by human power or used exclusively upon stationary rails or track.

Weapon means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles, and includes a weapon the possession of which is prohibited under State law.

Wildlife means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

Working day means a regular Federal workday and does not include Saturdays, Sundays or Federal holidays.

§ 1001.5 Closures and public use limits.

(a) Consistent with the purposes of the Presidio Trust Act, public health and safety, resource protection, sound land use management, and approved Presidio Trust policies, and based upon a determination that such action is necessary and appropriate, the Board may:

(1) Establish, for all or a portion of the Presidio Trust Area, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of the Presidio Trust Area to all public use or to a specific use or activity.

(2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.

(3) Terminate a restriction, limit, closure, designation, condition, or visiting hour restriction imposed under paragraph (a)(1) or (2) of this section.

(b) At the discretion of the Board, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the Presidio Trust Area, adversely affect the Presidio Trust Area's resources, require a long-term or significant modification in the management of the Presidio Trust Area, or is of a highly controversial nature, may be published as a rulemaking in the **Federal Register**.

(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit, or closure, the Board shall approve a written determination justifying the action. That determination shall set forth the reason(s) for the restriction, condition, public use limit or closure authorized by paragraph (a) of this section that has been established, and an explanation of why less restrictive measures will not suffice, or in the case of a termination of a restriction, condition, public use limit or closure previously established under paragraph (a), a determination as to why the restriction is no longer necessary and a finding that the termination will not adversely impact the resources of the Presidio Trust Area.

(d) To implement a public use limit, the Board may establish a permit, registration, or reservation system. The Board may charge fees for the

processing of requests for, and the issuance of, permits, registrations, or reservations. Permits, registrations, and reservations shall be issued in accordance with the criteria and procedures of this chapter.

§ 1001.6 Permits.

(a) When authorized by regulations set forth in this chapter, the Executive Director may issue a permit to authorize an otherwise prohibited or restricted activity or impose a public use limit.

The activity authorized by a permit shall be consistent with applicable law and based upon a determination that public health and safety, environmental or scenic values, natural or cultural resources, scientific research, implementation of management responsibilities, proper allocation and use of facilities, or the avoidance of conflict among visitor, tenant and neighbor use activities and services will not be unduly adversely impacted.

(b) Except as otherwise provided, application for a permit shall be submitted to the Executive Director during normal business hours.

(c) The public will be informed of the existence of a permit requirement in accordance with § 1001.7 of this chapter.

(d) Unless otherwise provided for by the regulations in this chapter, the Executive Director shall deny a permit that has been properly applied for only upon a determination that the designated capacity for an area or facility would be exceeded; or that one or more of the factors set forth in paragraph (a) of this section would be unduly adversely impacted. The basis for denial shall be provided to the applicant upon request.

(e) The Executive Director shall include in a permit the terms and conditions that the Executive Director deems necessary to protect the resources of the Presidio Trust Area or public safety and may also include terms or conditions established pursuant to the authority of any other section of this chapter or other applicable law.

(f) The following are prohibited:

(1) Engaging in an activity subject to a permit requirement imposed pursuant to any provision of this chapter without obtaining a permit; or

(2) Violating a term or condition of a permit issued pursuant to this chapter.

§ 1001.7 Public notice and comment.

(a) Whenever the authority of § 1001.5 is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of the Presidio Trust Area as open or closed, or to

require a permit to implement a public use limit, the public shall be notified by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the affected locale.

(2) Maps available in the office of the Presidio Trust and other places convenient to the public.

(3) Publication in a newspaper of general circulation in the San Francisco Bay Area.

(4) Other appropriate methods, such as the removal of closure signs, use of electronic media, brochures, maps and handouts.

(b) To the extent practicable, the Presidio Trust will post signs providing general information and regulatory guidance in the Presidio Trust Area that are consistent with signs used by the National Park Service under 36 CFR 1.10 in administering the Golden Gate National Recreation Area. The use of other types of signs by the Presidio Trust is not precluded.

(c) The Executive Director shall:

(1) Maintain and make available to the public upon request a current map showing the boundaries of the Presidio Trust Area.

(2) Publish in the **Federal Register**, within 30 days of any change in the boundaries of the Presidio Trust Area, a notice of such change and the availability of a revised map showing the boundaries of the Presidio Trust Area.

(3) Maintain and make available to the public upon request a compendium consisting of

(i) current map(s) showing the boundaries of those areas that have been designated to allow or prohibit certain uses or activities;

(ii) permit, registration, and reservation system requirements (including any applicable fees) and other conditions and restrictions imposed under the regulations in this chapter;

(iii) the written determinations required under § 1001.5(c); and

(iv) such other information or guidance as the Executive Director shall deem appropriate.

(d) At the discretion of the Board and in such manner as the Board deems appropriate, actions taken or proposed to be taken under §§ 1001.5, 1001.6, or any other provision of this chapter may be presented for comment to the Golden Gate National Recreation Area Advisory Commission and other interested entities, organizations, or individuals.

§ 1001.8 Review and final agency action.

(a) Decisions or actions to be made or taken by the Executive Director under

the regulations in this chapter (other than the regulations in parts 1007 and 1008 of this chapter) may also be made, altered, or reversed in whole or in part by the Board, as provided in this section. This authority of the Board may not be delegated.

(b) Any person aggrieved by a decision or action of the Executive Director may request that such be reviewed by the Board. Such a request must be received in writing at the office of the Presidio Trust within 20 days after receipt by the person aggrieved of notice of the action for which review is sought. If no decision or action is taken on such request within 60 days of its having been received, the decision or action to be reviewed shall be considered to have been approved by the Board.

(c) Decisions or actions of the Board shall be considered final agency action upon the earlier of:

(1) The passing of 60 days from the receipt of a request under paragraph (b) of this section, or

(2) The issuance of a final decision or action by the Board stated in writing to be final agency action.

PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

Sec.	
1002.1	Preservation of natural, cultural and archeological resources.
1002.2	Wildlife protection.
1002.3	Weapons, traps and nets.
1002.4	Research specimens.
1002.5	Camping and food storage.
1002.6	Picnicking.
1002.7	Audio disturbances.
1002.8	Fires.
1002.9	Sanitation and refuse.
1002.10	Pets.
1002.11	Horses and pack animals.
1002.12	Aircraft and air delivery.
1002.13	Swimming and boating.
1002.14	Skating, skateboards, and similar devices.
1002.15	Smoking.
1002.16	Property.
1002.17	Recreation fees.
1002.18	Interfering with agency functions.
1002.19	Report of injury or damage.
1002.20	Gambling.
1002.21	Noncommercial soliciting.
1002.22	Explosives.
1002.23	Special events.
1002.24	Public assemblies, meetings.
1002.25	Sale or distribution of printed matter.
1002.26	Livestock use and agriculture.
1002.27	Residing on Federal lands.
1002.28	Memorialization.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1002.1 Preservation of natural, cultural and archeological resources.

(a) Except as otherwise provided in this chapter, the following are prohibited:

(1) Possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state:

(i) Living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests.

(ii) Plants or the parts or products thereof.

(iii) Nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof.

(iv) A mineral resource or cave formation or the parts thereof.

(2) Introducing wildlife, fish or plants, including their reproductive bodies, into the Presidio Trust Area.

(3) Tossing, throwing or rolling rocks or other items inside caves or caverns, into valleys, canyons, or caverns, down hillsides or mountainsides, or into thermal features.

(4) Using or possessing wood gathered from within the Presidio Trust Area.

(5) Walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue, except in designated areas and under conditions established by the Board.

(6) Possessing, destroying, injuring, defacing, removing, digging, or disturbing a structure or its furnishing or fixtures, or other cultural or archeological resources.

(7) Possessing or using a mineral or metal detector, magnetometer, side scan sonar, other metal detecting device, or subbottom profiler. This paragraph does not apply to:

(i) A device broken down and stored or packed to prevent its use while in the Presidio Trust Area.

(ii) Electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

(iii) Mineral or metal detectors, magnetometers, or subbottom profilers used for authorized scientific, mining, or administrative activities.

(b) The Board may restrict hiking or pedestrian use to a designated trail or walkway system pursuant to §§ 1001.5 and 1001.6. Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway in violation of designated restrictions is prohibited.

(c)(1) The Board may designate certain fruits, berries, nuts, or unoccupied seashells which may be gathered by hand for personal use or consumption upon a written determination that the gathering or

consumption will not adversely affect wildlife, the reproductive potential of a plant species, or otherwise adversely affect the Presidio Trust Area's resources.

(2) The Board may:

(i) Limit the size and quantity of the natural products that may be gathered or possessed for this purpose; or

(ii) Limit the location where natural products may be gathered; or

(iii) Restrict the possession and consumption of natural products to the Presidio Trust Area.

(3) The following are prohibited:

(i) Gathering or possessing undesignated natural products.

(ii) Gathering or possessing natural products in violation of the size or quantity limits designated by the Board.

(iii) Unauthorized removal of natural products from the park area.

(iv) Gathering natural products outside of designated areas.

(v) Sale or commercial use of natural products.

(d) This section shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 1002.2 of this chapter.

§ 1002.2 Wildlife protection.

(a) The following are prohibited:

(1) The taking of wildlife.

(2) The feeding, touching, teasing, or frightening of wildlife.

(3) The intentional disturbing of wildlife nesting, breeding or other activities.

(4) Possessing unlawfully taken wildlife or portions thereof.

(5) Hunting, trapping, and fishing.

(b) The following are prohibited, except under such terms and conditions as may be established by the Board:

(1) The use of an artificial light for purposes of viewing wildlife.

(2) The transporting of lawfully taken wildlife through the Presidio Trust Area.

§ 1002.3 Weapons, traps and nets.

(a)(1) Except as otherwise provided in this section, it is prohibited to possess, carry or use a weapon, trap or net.

(2) Weapons, traps or nets may be carried, possessed or used:

(i) When used for target practice at designated times and at facilities or locations designed and constructed specifically for this purpose and designated as such by the Board.

(ii) Within a residential dwelling.

(3) Traps, nets and unloaded weapons may be possessed within a temporary

lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased or stored in a manner that will prevent their ready use.

(b) Carrying or possessing a loaded weapon in a motor vehicle, vessel or other mode of transportation is prohibited.

(c) The use of a weapon, trap or net in a manner that endangers persons or property is prohibited.

(d) Authorized law enforcement officers may carry weapons in the performance of their official duties.

§ 1002.4 Research specimens.

(a) It is prohibited to take plants, fish, wildlife, rocks or minerals except in accordance with other regulations of this chapter or pursuant to the terms and conditions of a specimen collection permit.

(b) A specimen collection permit may be issued only to an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the Executive Director determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies. A permit shall not be issued if removal of the specimen would result in damage to other natural or cultural resources, adversely affect environmental or scenic values, or if the specimen is readily available outside of the Presidio Trust Area.

(c) A permit to take an endangered or threatened species listed pursuant to the Endangered Species Act, or similarly identified by the State of California, shall not be issued unless the species cannot be obtained outside of the Presidio Trust Area and the primary purpose of the collection is to enhance the protection or management of the species.

(d) The Executive Director may issue a permit which authorizes the killing of plants, fish or wildlife after approving a written research proposal and determining that the collection will benefit science or has the potential for improving the management and protection of the resources of the Presidio Trust Area.

(e) Specimen collection permits shall require that specimens and data derived from consumed specimens will be made

available to the public and reports and publications resulting from a research specimen collection permit shall be filed with the Executive Director.

§ 1002.5 Camping and food storage.

(a) The following are prohibited:

(1) Camping anywhere in the Presidio Trust Area, except in designated areas and under conditions that may be established by the Board.

(2) Digging or leveling the ground at a campsite.

(3) Leaving camping equipment, site alterations, or refuse after departing from the campsite.

(4) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.

(5) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.

(6) The installation of permanent camping facilities.

(7) Displaying wildlife carcasses or other remains or parts thereof.

(8) Connecting to a utility system, except as designated.

(b) Food, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

§ 1002.6 Picnicking.

Picnicking is allowed, except in designated areas closed in accordance with § 1001.5. In areas where picnicking is allowed, persons may engage in picnicking only in accordance with such conditions as the Board may establish.

§ 1002.7 Audio disturbances.

(a) The following are prohibited:

(1) Operating motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or an audio device, such as a radio, television set, tape deck or musical instrument, in a manner:

(i) That exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet; or

(ii) If below that level, that nevertheless makes noise which is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, purpose for which the area was established,

impact on Presidio Trust Area visitors and tenants, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(2) Operating any type of power saw, portable motor or engine, or device powered by a portable motor or engine, except pursuant to the terms and conditions of a permit issued by the Executive Director.

(3) Operating a public address system, except in connection with a public gathering or special event for which a permit has been issued pursuant to § 1002.23 or § 1002.24.

§ 1002.8 Fires.

(a) The following are prohibited:

(1) Lighting or maintaining a fire, including a fire inside an appliance such as a barbecue grill, except in designated areas or receptacles and under conditions that may be established by the Board.

(2) Using stoves or lanterns in violation of established restrictions.

(3) Lighting, tending, or using a fire, stove or lantern in a manner that threatens, causes damage to, or results in the burning of property, real property or resources of the Presidio Trust Area, or creates a public safety hazard.

(4) Leaving a fire unattended.

(5) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or resources of the Presidio Trust Area, or creates a public safety hazard.

(b) Fires shall be completely extinguished upon termination of use.

(c) During periods of high fire danger, the Board may close all or a portion of the Presidio Trust Area to the lighting or maintaining of a fire.

§ 1002.9 Sanitation and refuse.

The following are prohibited:

(a) Using government refuse receptacles or other refuse facilities for dumping household, commercial, or industrial refuse, brought as such from private or municipal property, except in accordance with conditions established by the Board.

(b) Depositing refuse in the plumbing fixtures or vaults of a toilet facility.

(c) Draining refuse from a trailer or other vehicle, except in facilities provided for such purpose.

(d) Bathing, or washing food, clothing, dishes, or other property at public water outlets, fixtures or pools, except at those designated for such purpose.

(e) Disposing of human body waste, except at designated locations or in fixtures provided for that purpose.

§ 1002.10 Pets.

(a) The following are prohibited:

(1) Possession of a pet in a public building, public transportation vehicle, or any structure or area that may be closed to the possession of pets by the Board. This subparagraph shall not apply to guide dogs necessary to accompany persons with impaired hearing, vision, or mobility.

(2) Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times, except in designated areas and under conditions which may be established by the Board.

(3) Leaving a pet unattended and tied to an object, except in designated areas and under conditions which may be established by the Board.

(4) Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on Presidio Trust Area visitors and tenants, and other relevant factors, or that disturbs wildlife by barking, howling, or making other noise.

(5) Failing to comply with pet excrement disposal conditions which may be established by the Board.

(b) Pets or feral animals that are running at-large and/or observed by an employee or agent of the Presidio Trust in the act of killing, injuring or molesting humans, pets, or wildlife may be destroyed if necessary for public safety or protection of humans, pets, wildlife, or resources of the Presidio Trust Area.

(c) Pets that are running at-large and/or observed by an employee or agent of the Presidio Trust in the act of killing, injuring or molesting humans, pets, or wildlife may be impounded by the Presidio Trust and/or remanded to the custody of other governmental authorities, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

(d) Pets may be kept by residents of the Presidio Trust Area consistent with the provisions of this section and in accordance with terms of the owner's lease and conditions which may be established by the Board. Violation of these conditions is prohibited.

(e) This section does not apply to dogs or other animals used by authorized law enforcement officers in the performance of their official duties.

§ 1002.11 Horses and pack animals.

(a) The use of horses and pack animals is prohibited except in designated areas or pursuant to the terms and conditions of a permit issued by the Executive Director.

(b) It is prohibited:

(1) To allow horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(2) To obstruct a trail, or make an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(c) This section does not apply to authorized law enforcement officers in the performance of their official duties.

§ 1002.12 Aircraft and air delivery.

(a) Except as may be permitted by the Board, and except as the official business of the Federal government may be involved, the following are prohibited:

(1) Operating or using aircraft within the Presidio Trust Area.

(2) Delivering or retrieving a person or object by parachute, helicopter, or other airborne means, except in emergencies involving public safety or serious property loss.

(b) The owners of a downed aircraft shall remove the aircraft and all component parts thereof as directed by the Executive Director.

(c) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration.

§ 1002.13 Swimming and boating.

Swimming, boating, and the use of any type or description of craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water, including a buoyant device permitting or capable of free flotation, are prohibited in the Presidio Trust Area.

§ 1002.14 Skating, skateboards, and similar devices.

Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices is prohibited in the Presidio Trust Area, except in such areas as may be designated for such use by the Board.

§ 1002.15 Smoking.

(a) Smoking in the Presidio Trust Area is allowed or prohibited in the same manner as it would be allowed or prohibited under State law.

(b) Notwithstanding paragraph (a) of this section, the Board may designate a portion of the Presidio Trust Area, or all

or a portion of a building, structure or facility as closed to smoking when necessary to protect resources of the Presidio Trust Area, reduce the risk of fire, or prevent conflicts among visitor or tenant use activities.

§ 1002.16 Property.

(a) *Prohibitions.* The following are prohibited:

(1) Leaving property in the Presidio Trust area with no intent to retain possession.

(2) Leaving property unattended for longer than 12 hours, except in locations where longer time periods have been designated or in accordance with conditions established by the Board or a permit issued by the Executive Director.

(3) Failing to turn in found property to the Executive Director as soon as practicable.

(b) *Impoundment of property.* (1) Property determined to be left unattended in excess of an allowed period of time may be impounded by the Executive Director.

(2) Unattended property that interferes with visitor or tenant safety, orderly management of the Presidio Trust Area, or presents a threat to resources of the Presidio Trust Area may be impounded by the Executive Director at any time.

(3) Found or impounded property shall be inventoried to determine ownership and safeguard personal property.

(4) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section; or the Executive Director may assess the owner reasonable fees for the impoundment and storage of property impounded pursuant to this section.

(c) *Disposition of property.* (1) Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days. The 60-day period shall begin when the rightful owner of the property has been notified, if the owner can be identified, or from the time the property was placed in the Executive Director's custody, if the owner cannot be identified.

(2) Unclaimed, found property shall be stored for a minimum period of 60 days and, unless claimed by the owner or an authorized representative thereof, may be claimed by the finder, provided that the finder is not an employee of the Presidio Trust. Found property not claimed by the owner or an authorized

representative of the finder shall be deemed abandoned.

(3) Abandoned property shall be sold, donated, or disposed of at the discretion of the Executive Director.

(4) Property owned by a deceased person shall be disposed of in accordance with State law.

§ 1002.17 Recreation fees.

It is prohibited to enter designated entrance fee areas or use specialized sites, facilities, equipment or services, or to participate in group activities, recreation events, or other specialized recreation uses for which recreation fees have been established by the Presidio Trust, without paying the required fees and possessing the applicable permits.

§ 1002.18 Interfering with agency functions.

The following are prohibited:

(a) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(b) *Lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals that pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or resources of the Presidio Trust Area, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

(c) *False information.* Knowingly giving a false or fictitious report or other false information: (i) To an authorized law enforcement officer investigating an accident or violation of law or regulation; or (ii) on an application for a permit.

(d) *False Report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

§ 1002.19 Report of injury or damage.

A person involved in an incident resulting in personal injury or property damage exceeding \$500, other than an accident reportable under § 1003.2 of this chapter, shall report the incident to the Executive Director as soon as possible. This notification does not satisfy any other reporting requirements that may be imposed by federal or State law.

§ 1002.20 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited.

§ 1002.21 Noncommercial soliciting.

Soliciting or demanding gifts, money, goods or services is prohibited, except pursuant to the terms and conditions of a lease or other written agreement with the Presidio Trust or of a permit that has been issued under §§ 1002.23, 1002.24 or 1002.25.

§ 1002.22 Explosives.

(a) Using, firing, discharging, possessing, storing or transporting explosives, blasting agents, explosive materials, fireworks, or firecrackers are prohibited, except pursuant to the terms and conditions of a permit issued by the Executive Director.

(b) When permitted, the use, possession, storage and transportation of such materials shall be in accordance with applicable Federal and State laws and under such conditions as the Executive Director may establish.

§ 1002.23 Special events.

(a) Sports events, pageants, public spectator attractions, entertainments, ceremonies, and similar events are allowed when a permit therefore has been issued by the Executive Director. A permit shall be denied if such activities would:

(1) Cause injury or damage to resources of the Presidio Trust Area; or

(2) Be inconsistent with the purposes of the Presidio Trust Act or otherwise unreasonably impair the atmosphere of peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with the authorized activities of Presidio Trust Area visitors, tenants, or neighbors, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust Area tenants; or

(5) Present a clear and present danger to the public health and safety; or

(6) Result in significant conflict with other existing uses; or

(7) Constitute a violation of an applicable law or regulation.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment and facilities to be used, and any other information required by the Executive Director. The application shall be

submitted so as to reach the Executive Director at least seven days in advance of the proposed event.

(c) As a condition of permit issuance, the Executive Director may require:

(1) The filing of a bond payable to the Presidio Trust, in an amount adequate to cover costs such as restoration, rehabilitation, and cleanup of the area used, and other costs resulting from the special event. In lieu of a bond, a permittee may elect to deposit cash with the Presidio Trust equal to the amount of the required bond. Such deposits shall not earn interest.

(2) In addition to the requirements of paragraph (c)(1) of this section, the acquisition of liability insurance in which the Presidio Trust is named as co-insured in an amount sufficient to protect the Presidio Trust.

(d) The permit may contain such conditions as are reasonably consistent with protection and use of the Presidio Trust Area in accordance with the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

§ 1002.24 Public assemblies, meetings.

(a) Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within the Presidio Trust Area, provided a permit therefore has been issued by the Executive Director.

(b) An application for such a permit shall set forth the name of the applicant; the date, time, duration, nature and place of the proposed event; an estimate of the number of persons expected to attend; a statement of equipment and facilities to be used, and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area; or

(2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to resources or facilities of the Presidio Trust Area, inconsistency with the purposes of the Presidio Trust Act, interference with authorized activities of Presidio Trust Area visitors, tenants, or neighbors, impairment of public use facilities or services of Presidio Trust

Area tenants, or conflict with other existing uses; or

(4) The activity would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate areas of the Presidio Trust Area that are not available for public assemblies only if such activities would:

(1) Cause injury or damage to resources of the Presidio Trust Area; or

(2) Be inconsistent with the purposes of the Presidio Trust Act or otherwise unreasonably impair the atmosphere of peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with the authorized activities of Presidio Trust Area visitors, tenants, or neighbors, or with the administrative activities of the Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust Area tenants or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Constitute a violation of an applicable law or regulation.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the Presidio Trust Area in accordance with the purposes of the Presidio Trust Act. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(g) No permit shall be issued for a period in excess of seven days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in activities covered under this section to obstruct or impede pedestrians or vehicles, or harass Presidio Trust Area visitors or tenants with physical contact.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made to be followed by written confirmation within 72 hours.

§ 1002.25 Sale or distribution of printed matter.

(a) The sale or distribution of printed matter is allowed within the Presidio Trust Area, provided that a permit to do so has been issued by the Executive Director, and provided further that the printed matter is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed sale or distribution, the number of participants, and any other information required by the permit application form.

(c) The Executive Director shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to resources of the Presidio Trust Area or facilities, inconsistency with the purposes of the Presidio Trust Act, interference with authorized activities of Presidio Trust Area visitors and tenants, impairment of public use facilities or services of Presidio Trust Area tenants, interference with the administrative activities of the Presidio Trust or the National Park Service, or conflict with other existing uses; or

(4) The sale or distribution would constitute a violation of an applicable law or regulation.

(d) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(e) The Board shall designate areas of the Presidio Trust Area that are not available for the sale or distribution of printed matter only if such activities would:

(1) Cause injury or damage to resources of the Presidio Trust Area; or

(2) Be inconsistent with the purposes of the Presidio Trust Act or otherwise unreasonably impair the atmosphere of peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with the authorized activities of Presidio Trust Area visitors, tenants, or neighbors, or with the administrative activities of the

Presidio Trust or the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of Presidio Trust Area tenants or contractors; or

(5) Present a clear and present danger to the public health and safety; or

(6) Constitute a violation of an applicable law or regulation.

(f) The permit may contain such conditions as are reasonably consistent with protection and use of the Presidio Trust Area in accordance with the purposes of the Presidio Trust Act.

(g) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(h) It is prohibited for persons engaged in the sale or distribution of printed matter under this section to obstruct or impede pedestrians or vehicles, harass Presidio Trust Area visitors or tenants with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(i) A permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

§ 1002.26 Livestock use and agriculture.

The running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind in the Presidio Trust Area or the use of the Presidio Trust Area for agricultural purposes is prohibited except as may be allowed for residential purposes in accordance with the terms and conditions of a valid permit, lease or contract.

§ 1002.27 Residing on Federal lands.

It is prohibited to reside in the Presidio Trust Area, except pursuant to the terms and conditions of a valid permit, lease or contract.

§ 1002.28 Memorialization.

(a) The installation of a monument, memorial, tablet, structure, or other commemorative installation in the

Presidio Trust Area without a permit issued by the Board is prohibited.

(b) The scattering of human ashes from cremation is prohibited, except pursuant to the terms and conditions of a permit, or in designated areas and according to conditions which may be established by the Board.

PART 1003—VEHICLES AND TRAFFIC SAFETY

Sec.

- 1003.1 Authorized emergency vehicles.
- 1003.2 Report of motor vehicle accident.
- 1003.3 Travel on Presidio Trust Area roads and designated routes.
- 1003.4 Load, weight and size limits.
- 1003.5 Speed limits.
- 1003.6 Unsafe operation.
- 1003.7 Operating under the influence of alcohol or drugs.
- 1003.8 Bicycles.
- 1003.9 Hitchhiking.
- 1003.10 Powerless flight.
- 1003.11 Parking.
- 1003.12 Commercial passenger vehicles.
- 1003.13 Commercial vehicles.
- 1003.14 Safety belts.

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1003.1 Authorized emergency vehicles.

(a) The operator of an authorized emergency vehicle, when responding to an emergency or when pursuing or apprehending an actual or suspected violator of the law, may:

- (1) Disregard traffic control devices;
- (2) Exceed the speed limit; and
- (3) Obstruct traffic.

(b) The provisions of paragraph (a) of this section do not relieve the operator from the duty to operate with due regard for the safety of persons and property.

§ 1003.2 Report of motor vehicle accident.

(a) The operator of a motor vehicle involved in an accident resulting in property damage, personal injury or death shall report the accident to the Executive Director as soon as practicable, but within 24 hours of the accident. If the operator is physically incapable of reporting the accident, an occupant of the vehicle shall report the accident to the Executive Director.

(b) A person shall not tow or move a vehicle that has been involved in an accident without first notifying the Executive Director unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from the Presidio Trust Area.

(c) The notification requirements imposed by this section do not relieve the operator and occupants of a motor vehicle involved in an accident of the responsibility to satisfy reporting requirements imposed by State law.

§ 1003.3 Travel on Presidio Trust Area roads and designated routes.

The following are prohibited:

- (a) Operating a motor vehicle anywhere other than on Presidio Trust Area roads, in parking areas, and on routes and areas designated for such use or in accordance with the terms of a permit.
- (b) Operating a motor vehicle not equipped with pneumatic tires.
- (c) Operating a motor vehicle in a manner that causes unreasonable damage to the surface of a road or route.

§ 1003.4 Load, weight and size limits.

(a) Vehicle load, weight and size limits established by State law apply to a vehicle operated on a Presidio Trust Area road. The Board may designate more restrictive limits when appropriate for traffic safety or protection of the road surface. The Executive Director may require a permit and establish conditions for the operation of a vehicle exceeding designated limits.

(b) The following are prohibited:

- (1) Operating a vehicle that exceeds a load, weight or size limit designated by the Board.
- (2) Operating a motor vehicle with an auxiliary detachable side mirror that extends more than 10 inches beyond the side fender line except when the motor vehicle is towing a second vehicle.

§ 1003.5 Speed limits.

(a) The Board shall establish speed limits in the Presidio Trust Area and post such limits by using standard traffic control devices.

(b) Unless otherwise posted, the speed limit in the Presidio Trust Area is 25 miles per hour.

(c) An authorized law enforcement officer may utilize radiomicrowaves or other electrical devices to determine the speed of a vehicle on a Presidio Trust Area road. Signs indicating that vehicle speed is determined by the use of radiomicrowaves or other electrical devices are not required.

(d) The offense of exceeding a speed limit is defined by State law and violations are prosecuted pursuant to the provision of § 1001.2(d) of this chapter.

§ 1003.6 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of § 1001.2(d) of this chapter.

(b) The following are prohibited:

- (1) Operating a motor vehicle without due care or at a speed greater than that

which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle except as may be allowed under State law.

§ 1003.7 Operating under the influence of alcohol or drugs.

(a) At the request or direction of an authorized law enforcement officer who has probable cause to believe that an operator of a motor vehicle within the Presidio Trust Area is under the influence of alcohol, or a drug, or drugs, or any combination thereof, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(b) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(c) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized law enforcement officer.

(d) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(e) The offense of operating a motor vehicle while under the influence of alcohol or drugs is defined by State law and violations are prosecuted pursuant to the provision of § 1001.2(d) of this chapter.

§ 1003.8 Bicycles.

(a) The use of a bicycle is prohibited except on Presidio Trust Area roads, in parking areas and on routes designated for bicycle use by the Board after considering possible injury or damage to resources of the Presidio Trust Area, the purposes of the Presidio Trust Act, possible impairment of the operation of public use facilities or services of Presidio Trust Area tenants, public health and safety, and potential for

interference with the authorized activities of Presidio Trust Area visitors and tenants, or with the administrative activities of the Presidio Trust.

(b) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§ 1003.3 and 1003.4.

(c) Bicycle speed limits are as follows:

(1) On Presidio Trust Area roads: the same as motor vehicle speed limits.

(2) On other designated routes in the Presidio Trust Area: 15 miles per hour.

(3) On blind curves and when passing other trail users: 5 miles per hour.

(d) The following are prohibited:

(1) Operating a bicycle during periods of low visibility, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(2) Operating a bicycle abreast of another bicycle except where authorized by the Board.

(3) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

(4) The possession of a bicycle on routes not designated as open to bicycle use.

§ 1003.9 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the Board.

§ 1003.10 Powerless flight.

The use of devices designed to transport persons through the air in powerless flight is prohibited.

§ 1003.11 Parking.

The Board shall designate areas and establish conditions for parking of motor vehicles, including time limits and fees. Motor vehicles parked in violation of these conditions may be ticketed and/or towed at the owner's expense.

§ 1003.12 Commercial passenger vehicles.

(a) The use of Presidio Trust Area roads by commercial passenger vehicles is prohibited, except pursuant to the terms and conditions of a permit issued by the Executive Director, and only in such areas as may be designated by the Board, with the following exceptions:

(1) Operation of a commercial passenger vehicle by a government agency or instrumentality for the purpose of providing public transit.

(2) Operation of a commercial passenger vehicle as part of a trip or

tour initiated, organized, and directed by an established bona fide school or college, institution, society or other organization, as a nonprofit activity of such organization, and if all passengers are students, faculty, members, or employees of such organization, or otherwise connected therewith, provided that, upon request by an authorized law enforcement officer, credentials are presented by the head of such institution or organization indicating the trip is in accordance with these provisions. Clubs or associations having as a principal purpose the arranging of tours, trips, or transportation for their members will not qualify for admission into the Presidio Trust Area under the provision of this paragraph.

(3) Operation of a commercial passenger vehicle as a result of an emergency involving public safety or risk of serious property loss.

(b) The idling of commercial passenger vehicle engines while loading, unloading, or waiting for passengers to board is prohibited.

§ 1003.13 Commercial vehicles.

The use of Presidio Trust Area roads by commercial vehicles when such use is not connected with the administrative activities of the Presidio Trust or authorized services provided by or to Presidio Trust Area visitors or tenants, is prohibited, except that in emergencies the Executive Director may grant permission to use Presidio Trust Area roads.

§ 1003.14 Safety belts.

(a) Each operator and passenger occupying any seating position of a motor vehicle in the Presidio Trust Area will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

PART 1004—COMMERCIAL AND PRIVATE OPERATIONS

Sec.

1004.1 Signs and advertisements.

1004.2 Alcoholic beverages; sale of intoxicants.

1004.3 Business operations.

1004.4 Commercial photography.

1004.5 Construction of buildings or other facilities.

1004.6 Discrimination in employment practices.

1004.7 Discrimination in furnishing public accommodations and transportation services.

1004.8 Eating, drinking, or lodging establishments.

1004.9 Nuisances.

1004.10 Prospecting, mining, and mineral leasing.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1004.1 Signs and advertisements.

(a) No sign, poster, placard, flier, or other printed notice may be posted anywhere in the Presidio Trust Area except in accordance with such conditions as to reasonable time, place, and manner that may be established by the Board.

(b) Commercial notices or advertisements shall not be displayed, posted, or distributed within the Presidio Trust Area without a permit issued therefor.

§ 1004.2 Alcoholic beverages; sale of intoxicants.

(a) The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than one percent of alcohol by weight, shall conform with all applicable Federal and State laws and regulations.

(b) No such liquor shall be sold within the Presidio Trust Area, unless a permit for the sale thereof has first been secured from the Executive Director.

(1) In granting or refusing applications for permits as herein provided, the Executive Director shall take into consideration the character of the neighborhood, the availability of other liquor-dispensing facilities, State law governing the sale of liquor, and any other local factors which have a relationship to the privilege requested.

(2) The permit for sale of intoxicating liquors shall contain such general and special conditions as the Executive Director may deem reasonably necessary to insure safe and orderly management of the Presidio Trust Area.

(3) The permittee shall comply with State law, other than fee and license requirements, as such would be applicable to the premises and to the sale and dispensing of intoxicating beverages.

§ 1004.3 Business operations.

Engaging in or soliciting any business in the Presidio Trust Area, except in accordance with the provisions of a permit, contract, or other written agreement with the Presidio Trust, is prohibited.

§ 1004.4 Commercial photography.

(a) *Permit requirement.* Before any still or motion picture may be taken or filmed or any video or television production or sound track may be made, which involves the use of professional casts, models, settings, or crews, by any person other than bona fide newsreel or news television personnel, a written permit must first be obtained from the Executive Director.

(b) *Bond.* A bond shall be furnished, or deposit made in cash or by certified check, in an amount to be set by the Executive Director to insure full compliance with all of the conditions prescribed in paragraph (c)(5) of this section.

(c) *Form of application.* The person or organization seeking a permit must state in writing:

- (1) The type of activity sought to be performed;
- (2) The area of the Presidio Trust Area in which the activity is sought to be performed;
- (3) The scope of the filming (or production or recording) and the manner and extent thereof;
- (4) The approximate dates of the activity;

(5) That the applicant will comply with the following conditions:

(i) Utmost care will be exercised to see that no natural features or public or private property are injured, and after completion of the work the area will, as required by the official in charge, either be cleaned up and restored to its prior condition or left, after clean-up, in a condition satisfactory to the official of the Presidio Trust in charge.

(ii) Credit will be given to the Presidio Trust through the use of an appropriate title or announcement, unless there is issued by the Executive Director a written statement that no such courtesy credit is desired.

(iii) Pictures will be taken of wildlife only when such wildlife will be shown in its natural state or under approved management conditions if such wildlife is confined.

(iv) Any special instructions received from the official in charge of the area will be complied with.

(v) Any additional information relating to the privilege applied for will be furnished upon request of the official in charge.

§ 1004.5 Construction of buildings or other facilities.

Constructing or attempting to construct a building, or other structure, road, trail, path, or other way, telephone line, telegraph line, power line, or any other private or public utility, upon, across, over, through, or under any

portion of the Presidio Trust Area, except in accordance with the provisions of a valid permit, contract, or other written agreement with the United States, is prohibited.

§ 1004.6 Discrimination in employment practices.

(a) With the exception of governmental agencies or instrumentalities covered by other non-discrimination requirements, the proprietor, owner, or operator of any hotel, inn, lodge, restaurant, recreational facility, or other facility or accommodation offered to or enjoyed by the general public within the Presidio Trust Area, is prohibited from discriminating against any employee or maintaining any employment practice which discriminates because of race, creed, color, ancestry, sex, age, disabling condition, national origin or sexual orientation in connection with any activity provided for or permitted by contract with or permit from the Presidio Trust or by derivative subcontract or sublease. As used in this section, the term "employment" includes, but is not limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Each such proprietor, owner or operator shall post the following notice at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking employment:

Notice

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination in employment practices on the basis of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation is permitted in this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints or violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

§ 1004.7 Discrimination in furnishing public accommodations and transportation services.

(a) With the exception of governmental agencies or instrumentalities covered by other non-discrimination requirements, the proprietor, owner or operator and the employees of any hotel, inn, lodge, restaurant, recreational facility, or other facility or accommodation offered to or enjoyed by the general public within the Presidio Trust Area and, while using any portion of the Presidio, any

commercial passenger-carrying motor vehicle service and its employees, are prohibited from:

(1) Publicizing the facilities, accommodations or any activity conducted therein in any manner that would directly or inferentially reflect upon or question the acceptability of any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation; or

(2) Discriminating by segregation or otherwise against any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation in furnishing or refusing to furnish such person or persons any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

(b) Each such proprietor, owner, or operator shall post the following notice at such locations as will insure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges:

Notice

This is a facility operated in an area under the jurisdiction of the Presidio Trust. No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both. Complaints or violations of this prohibition should be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

§ 1004.8 Eating, drinking, or lodging establishments.

(a) No establishment offering food, drink, or lodging for sale within the Presidio Trust Area may be operated without a permit obtained from the Executive Director. Such permit may include terms and conditions deemed necessary by the Executive Director to the health, safety and welfare of the public and it may be revoked upon failure to comply with the requirements of paragraphs (b) and (c) of this section or the conditions set forth in the permit.

(b) Such establishment shall be maintained and operated in accordance with the rules and regulations recommended by the U.S. Public Health Service for such establishments, and State law. In the event of conflict or inconsistency between such U.S. Public Health Service recommendations and the requirements of State law, the former shall prevail.

(c) The Executive Director shall have the right to inspect such establishments

at reasonable times to determine whether the establishment is being operated in accordance with the applicable rules and regulations and in accordance with the provisions of the permit.

§ 1004.9 Nuisances.

The creation or maintenance of a nuisance within the Presidio Trust Area is prohibited.

§ 1004.10 Prospecting, mining, and mineral leasing.

Prospecting, mining, and the location of mining claims under the general mining laws and leasing under the mineral leasing laws are prohibited in the Presidio Trust Area except as authorized by law.

PART 1005-RIGHTS-OF-WAY

Sec.

- 1005.1 Definitions.
- 1005.2 Issuance of rights-of-way.
- 1005.3 Nature of interest granted.
- 1005.4 Unauthorized occupancy.
- 1005.5 Terms and conditions.
- 1005.6 Nonconstruction, abandonment or nonuse.
- 1005.7 Deviation from approved right-of-way.
- 1005.8 Order of cancellation.
- 1005.9 Change in jurisdiction over lands.
- 1005.10 Transfer of right-of-way.
- 1005.11 Disposal of property on termination of right-of-way.

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1005.1 Definitions.

The following terms have the following meanings as used in this part:

Construction work means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

Project means the physical structures in connection with which the right-of-way is approved.

Right-of-way includes license, permit, or easement, as the case may be.

§ 1005.2 Issuance of rights-of-way.

Rights-of-way over or through the Presidio Trust Area will be issued by the Board under the regulations of this part on such terms and conditions (including monetary charges) as the Board finds to be in the public interest, in accordance with applicable law, and consistent with the purposes of the Presidio Trust Act.

§ 1005.3 Nature of interest granted.

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the

applicable statute; no interest shall be greater than a permit revocable at the discretion of the Board unless an applicable statute provides otherwise. Except as otherwise provided by law, no interest granted shall give the grantee any right whatsoever to take from the Presidio Trust Area any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

§ 1005.4 Unauthorized occupancy.

Any occupancy or use of the lands of the Presidio Trust Area without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 1005.5 Terms and conditions.

By accepting a right-of-way, the holder thereof agrees and consents to comply with and be bound by the following terms and conditions, except to the extent that the instrument granting the right-of-way expressly provides otherwise:

(a) To comply with Federal and State laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To prevent or minimize damage to the Presidio Trust Area's resources related to the holder's use of or activities related to the right-of-way, including but not limited to restoration, landscaping, and disposal of brush and other refuse, as determined by and at the direction of the Executive Director.

(c) To take such soil and resource conservation and protection measures including weed control, on the land covered by the right-of-way as determined by and at the direction of the Executive Director.

(d) To do everything reasonably within the holder's power, both independently and on request of any duly authorized representative of the Presidio Trust or the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-

of-way, subject to the approval of the Executive Director.

(f) To pay the Presidio Trust the full value for all damages to lands in the Presidio Trust Area or other property of or administered by the Presidio Trust caused by the holder or by the holder's employees, contractors, or employees of the contractors, and to indemnify the Presidio Trust against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way; except that where a right-of-way is granted hereunder to a State or other governmental agency whose power to assume liability by agreement is limited by law, such agency shall indemnify the Presidio Trust as provided above to the extent that it may legally do so.

(g) To refrain from cutting or destroying any timber without first obtaining permission from the Executive Director; to replace in kind any trees removed or reimburse the Trust for its costs in replacing in kind any trees removed; and to notify promptly the Executive Director of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the Presidio Trust in advance of construction such sum of money as the Executive Director may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the Board to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Executive Director, the holder shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the Executive Director.

(j) That the holder shall at all times keep the Executive Director informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, ancestry, sex, age, disabling condition, national origin, or sexual orientation and shall require an

identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management and administration by the Presidio Trust or the United States of the lands affected thereby, and that the holder agrees and consents to the occupancy and use by the Presidio Trust and the United States, and their grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Board to be necessary, without liability or expense to the Presidio Trust or the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the Presidio Trust or the United States.

§ 1005.6 Nonconstruction, abandonment or nonuse.

Unless otherwise provided by law, rights-of-way are subject to cancellation by the Board for failure to construct within the period allowed under the terms of the issuance of the right-of-way and for abandonment or nonuse.

§ 1005.7 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way shall be undertaken without the prior written approval of the Executive Director. The Executive Director may require that the Board approve the deviation where in the Executive Director's judgment the deviation is substantial.

§ 1005.8 Order of cancellation.

All rights-of-way issued pursuant to this part shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto, or for the violation of the terms or conditions of the right-of-way, at the discretion of the Board. No right-of-way shall be deemed to be cancelled except on the issuance of a specific order of cancellation, which order shall be published in the **Federal Register**.

§ 1005.9 Change in jurisdiction over lands.

A change in jurisdiction over the lands in the Presidio from one Federal agency to another will not cancel a right-of-way involving such lands. It

will however, change the administrative jurisdiction over the right-of-way or part thereof affected by the change in jurisdiction.

§ 1005.10 Transfer of right-of-way.

No transfer of any right-of-way will be recognized unless and until it is first approved in writing by the Board.

§ 1005.11 Disposal of property on termination of right-of-way.

Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all monies due the Presidio Trust thereunder have been paid, the holder of the right-of-way will be allowed 60 days or such additional time as may be granted by the Executive Director in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the Presidio Trust, without any compensation owed therefore. No claim for damages against the Presidio Trust or its employees, directors, officers, or agents shall arise or be made on account of such removal and restoration work.

PART 1006—PRESIDIO TRUST SYMBOLS

Sec.

- 1006.1 Definitions.
- 1006.2 Applicability.
- 1006.3 Uses.
- 1006.4 Power to revoke.
- 1006.5 Penalties.

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note).

§ 1006.1 Definitions.

The term *Presidio Trust symbol*, as used in this part, refers to:

- (a) any official symbol, insignia, trademark or service mark of the Presidio Trust designated as such by action of the Board, with notice published in the **Federal Register**; and
- (b) the words "Presidio" and "Trust" when used together and/or in conjunction with other words.

§ 1006.2 Applicability.

The regulations contained in this part shall apply to the fullest extent of the jurisdiction of the United States.

§ 1006.3 Uses.

(a) All reproduction and use of Presidio Trust symbols by any entity other than the Presidio Trust are prohibited, except as provided in these regulations.

(b) The Board may license or otherwise permit the reproduction and use of one or more Presidio Trust symbols, with or without charge, for uses that are consistent with the purposes of the Presidio Trust Act.

§ 1006.4 Power to revoke.

Permission granted under this part by the Board may be rescinded by the Board at any time upon a finding that the use of the Presidio Trust symbol or symbols involved is inconsistent with the purposes of the Presidio Trust Act, or for disregard of any limitations or terms contained in the applicable licenses or permits.

§ 1006.5 Penalties.

Whoever reproduces or uses any Presidio Trust symbol in violation of the regulations of this part shall be subject to the penalties prescribed in 18 U.S.C. 701.

PART 1007—REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

- 1007.1 Purpose and scope.
- 1007.2 Records available.
- 1007.3 Requests for records.
- 1007.4 Preliminary processing of requests.
- 1007.5 Action on initial requests.
- 1007.6 Time limits for processing initial requests.
- 1007.7 Appeals.
- 1007.8 Action on appeals.
- 1007.9 Fees.
- 1007.10 Waiver of fees.

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552.

§ 1007.1 Purpose and scope.

(a) This part contains the procedures for submission to and consideration by the Presidio Trust of requests for records under the Freedom of Information Act, 5 U.S.C. 552.

(b) Before invoking the formal procedures set out below, persons seeking records from the Presidio Trust may find it useful to consult with the Presidio Trust's FOIA Officer, who can be reached at Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052, Telephone: (415) 561-5300.

(c) The procedures in this part do not apply to:

(1) Records published in the **Federal Register**, the Bylaws of the Presidio Trust, statements of policy and interpretations, and other materials that have been published by the Presidio Trust on its internet website (<http://www.presidiotrust.gov>) or are routinely made available for inspection and copying.

(2) Records or information compiled for law enforcement purposes and

covered by the disclosure exemption described in § 1007.2(c)(7) if:

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that:

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by the United States Park Police under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 1007.2 Records available.

(a) *Policy.* It is the policy of the Presidio Trust to make its records available to the public to the greatest extent possible consistent with the purposes of the Presidio Trust Act and the Freedom of Information Act.

(b) *Statutory disclosure requirement.* FOIA requires that the Presidio Trust, on a request from a member of the public submitted in accordance with the procedures in this part, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from FOIA's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Presidio Trust to withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this part to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released. In such circumstances, the records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

§ 1007.3 Requests for records.

(a) *Submission of requests.* A request to inspect or copy records shall be

submitted to the Presidio Trust's FOIA Officer at P.O. Box 29052, San Francisco, CA 94129-0052.

(b) *Form of requests.* (1) Requests under this part shall be in writing and must specifically invoke FOIA.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Presidio Trust familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall:

(A) Specify the fee category (commercial use, educational institution, noncommercial scientific institution, news media, or other, as defined in § 1007.9 of this chapter) in which the requester claims the request to fall and the basis of this claim and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 1007.9 (f), (g) and (h), the time for responding to requests may be delayed:

(A) If a requester has not sufficiently identified the fee category applicable to the request,

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Presidio Trust or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Presidio Trust.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 1007.10 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST."

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from

manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Presidio Trust determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Presidio Trust may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

§ 1007.4 Preliminary processing of requests.

(a) *Scope of requests.* Unless a request clearly specifies otherwise, requests to the Presidio Trust may be presumed to seek only records of the Presidio Trust.

(b) *Records of other departments and agencies.* (1) If a requested record in the possession of the Presidio Trust originated with another Federal department or agency, the request shall be referred to that agency unless:

(i) The record is of primary interest to the Presidio Trust, for example, because it was developed or prepared pursuant to Presidio Trust regulations or request,

(ii) The Presidio Trust is in a better position than the originating agency to assess whether the record is exempt from disclosure, or

(iii) The originating agency is not subject to FOIA.

(2) A request for documents that were classified by another agency shall be referred to that agency.

(c) *Consultation with submitters of commercial and financial information.*

(1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the Presidio Trust shall provide the submitter with notice of the request whenever:

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under FOIA, including a specification of any claim of competitive or other business harm that

would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(4) If a submitter's statement cannot be obtained within the time limit for processing the request under § 1007.6, the requester shall be notified of the delay as provided in § 1007.6(f).

(5) Notification to a submitter is not required if:

(i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than FOIA) or regulation (other than this part);

(iv) Disclosure is clearly prohibited by a statute, as described in § 1007.2(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm.

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Presidio Trust more than 10 years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.

(6) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

§ 1007.5 Action on initial requests.

(a) *Authority.* (1) Requests shall be decided by the FOIA Officer.

(2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in § 1007.9.

(2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (e.g., paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

(3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(4) If a claim of confidentiality has been found frivolous in accordance with § 1007.4(c)(5)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A listing of the names and titles or positions of each person responsible for the denial;

(ii) A reference to the specific exemption or exemptions authorizing the withholding;

(iii) If neither a statute nor an Executive order requires withholding, the sound ground for withholding;

(iv) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(v) A statement that the denial may be appealed and a reference to the procedures in § 1007.7 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records

cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed and a reference to the procedures in § 1007.7 for appeal.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited processing is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 1007.6 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 20 working day time limit begins to run when a request meeting the requirements of § 1007.3(b) is received at the Presidio Trust.

(2) The running of the basic time limit may be delayed or tolled as explained in § 1007.9 (f), (g) and (h) if a requester:

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver, or

(ii) Has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended by more than 20 working days:

(1) The need to search for and collect the requested records from facilities or other establishments that are separate from the main office of the Presidio Trust;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 20 working day period for deciding an initial request, or an extension thereof under § 1007.6(c), the requester may deem the request denied and may exercise a right of appeal in accordance with § 1007.7.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal, including a reference to the procedures for filing an appeal in § 1007.7.

§ 1007.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the Executive Director when:

(1) Records have been withheld,

(2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located,

(3) A fee waiver has been denied,

(4) A request has not been decided within the time limits provided in § 1007.6; or

(5) A request for expedited processing under § 1007.5(d) has been denied.

(b) *Time for appeal.* An appeal must be received at the office of the Presidio Trust no later than 20 working days after the date of the initial denial, in the

case of a denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

§ 1007.8 Action on appeals.

(a) *Authority.* Appeals shall be decided by the Executive Director after consultation with the FOIA Officer and the General Counsel.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 1007.7(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 1007.6(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 1007.6(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in the United States District Court for the Northern District of California, as specified in 5 U.S.C. 552(a)(4).

(4) When no determination can be reached within the applicable time

limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched and of the right to seek judicial review.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the FOIA Officer shall immediately make the records available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the Northern District of California and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), the submitter shall be provided notice as described in § 1007.5(b)(3).

§ 1007.9 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 1007.10, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Board and published in the compendium provided under § 1001.7 of this chapter.

(2) Fees shall not be charged if the total amount chargeable does not exceed the costs of collecting the fee. The Trust shall periodically determine the cost of collecting a fee and publish such amount in the compendium provided under § 1001.7 of this chapter.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(4) Fees shall be charged to recover the full costs of providing such services as certifying that records are true copies or sending records by a method other than regular mail, when the Trust elects to provide such services.

(5) The following definitions shall apply to this part:

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents or databases. Searches shall be undertaken in the

most efficient and least expensive manner possible, consistent with the Presidio Trust's obligations under FOIA and other applicable laws.

(ii) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(iii) A *commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that further the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(iv) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(v) A *noncommercial scientific institution* is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(vi) A *representative of the news media* is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. Free-lance journalists may be considered representatives of the news media if they demonstrate a solid basis for expecting publication through

a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search and review (even if the search and review fails to locate records that are not exempt from disclosure) and duplication.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in:

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in:

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c), or (d) of this section shall be charged fees for document search (even if the search fails to locate records that are not exempt from disclosure) and

duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in:

(i) Examining requested records to determine whether they are exempt from disclosure,

(ii) Deleting reasonably segregable exempt matter,

(iii) Monitoring the requester's inspection of agency records, or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d), or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Presidio Trust, and the requester has not sought and been granted a full waiver of fees under § 1007.10, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h)(1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 1007.6 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Presidio Trust. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection shall be prepared for each request that requires collection of fees.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees.

§ 1007.10 Waiver of fees.

(a) *Statutory fee waiver.* Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 1007.9 if disclosure of the information is in the public interest because it:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the government and

(2) Is not primarily in the commercial interest of the requester.

(b) *Elimination or reduction of fees.* Ordinarily, in the circumstances where the criteria of subsection (a) are met, fees will be reduced by twenty-five percent from the fees otherwise chargeable to the requester. In exceptional circumstances, and with the approval of the Executive Director, fees may be reduced below this level or waived entirely.

(c) *Notice of denial.* If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(1) A statement of the basis on which the waiver or reduction has been denied.

(2) A listing of the names and titles or positions of each person responsible for the denial.

(3) A statement that the denial may be appealed to the Executive Director and a description of the procedures in § 1007.7 for appeal.

PART 1008—REQUESTS UNDER THE PRIVACY ACT

Sec.

1008.1 Purpose and scope.

1008.2 Definitions.

1008.3 Records subject to the Privacy Act.

1008.4 Standards for maintenance of records subject to the Privacy Act.

1008.5 Federal Register notices describing systems of records.

1008.6 Assuring integrity of records.

1008.7 Conduct of employees.

1008.8 Government contracts.

1008.9 Disclosure of records.

1008.10 Accounting for disclosures.

1008.11 Requests for notification of existence of records: Submission.

1008.12 Requests for notification of existence of records: Action on.

1008.13 Requests for access to records.

1008.14 Requests for access to records: Submission.

1008.15 Requests for access to records: Initial decision.

1008.16 Requests for notification of existence of records and for access to records: Appeals.

1008.17 Requests for access to records: Special situations.

1008.18 Amendment of records.

1008.19 Petitions for amendment: Submission and form.

1008.20 Petitions for amendment: Processing and initial decision.

1008.21 Petitions for amendment: Time limits for processing.

1008.22 Petitions for amendment: Appeals.

1008.23 Petitions for amendment: Action on appeals.

1008.24 Statements of disagreement.

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552a.

§ 1008.1 Purpose and scope.

This part contains the regulations of the Presidio Trust implementing section 3 of the Privacy Act. Sections 1008.3 through 1008.10 describe the procedures and policies of the Presidio Trust concerning maintenance of records which are subject to the Privacy Act. Sections 1008.11 through 1008.17 describe the procedure under which individuals may determine whether systems of records subject to the Privacy Act contain records relating to them and the procedure under which they may seek access to existing records. Sections 1008.18 through 1008.24 describe the procedure under which individuals may petition for amendment of records subject to the Privacy Act relating to them.

§ 1008.2 Definitions.

The following terms have the following meanings as used in this part:

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain means maintain, collect, use or disseminate.

Privacy Act means section 3 of the Privacy Act, 5 U.S.C. 552a.

Record means any item, collection, or grouping of information about an individual that is maintained by the Presidio Trust, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph. *Record* includes:

(1) *System of records* means a group of any records under the control of the Presidio Trust from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(2) *Medical records* means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(3) *Personnel records* means records used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(4) *Statistical records* means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

Routine use means a use of a record for a purpose which is compatible with the purpose for which it was collected.

System notice means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published in the **Federal Register** upon establishment or revision of the system of records.

System manager means the official designated in a system notice as having administrative responsibility for a system of records.

Privacy Act Officer means the Presidio Trust official charged with responsibility for carrying out the functions assigned in this part.

§ 1008.3 Records subject to the Privacy Act.

The Privacy Act applies to all records which the Presidio Trust maintains in a system of records.

§ 1008.4 Standards for maintenance of records subject to the Privacy Act.

(a) *Content of records.* Records subject to the Privacy Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the Presidio Trust required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Privacy Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determinations about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others, may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individuals concerning uses of information.* (1) Each individual who is asked to supply information about him or herself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on the individual, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be provided on the form, on a tear-off sheet attached to the form, or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests a copy.

(iii) An individual may be asked to acknowledge, in writing, that the notice required by this section has been provided.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless the maintenance of the record is:

(1) Expressly authorized by statute or by the individual about whom the record is maintained or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

§ 1008.5 Federal Register notices describing systems of records.

The Privacy Act requires publication of a notice in the **Federal Register** describing each system of records subject to the Privacy Act. Such notice will be published prior to the establishment or a revision of the system of records. 5 U.S.C. 552a(e)(4).

§ 1008.6 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Privacy Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 552a(e)(10).

(b) *Records security.* Whether maintained in physical or electronic form, records subject to the Privacy Act shall be maintained in a secure manner commensurate with the sensitivity of the information contained in the system of records. The Privacy Act Officer will periodically review these security measures to ensure their adequacy.

§ 1008.7 Conduct of employees.

(a) *Handling of records subject to the Privacy Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Presidio Trust may disclose records subject to the Privacy Act unless disclosure is permitted under § 1008.9 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Presidio Trust may alter or destroy a record subject to the Privacy Act unless:

(1) Such alteration or destruction is properly undertaken in the course of the employee's regular duties or

(2) Such alteration or destruction is required by a decision under §§ 1008.18 through 1008.23 or the decision of a court of competent jurisdiction.

§ 1008.8 Government contracts.

(a) *Required contract provisions.* When a contract provides for the operation by or on behalf of the Presidio Trust of a system of records to accomplish a Presidio Trust function, the contract shall, consistent with the Presidio Trust's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this part to be applied to such system.

(b) *System manager.* A regular employee of the Presidio Trust will be the manager for a system of records operated by a contractor.

§ 1008.9 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) To those officers or employees of the Presidio Trust who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use which has been described in a system notice published in the **Federal Register**;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code.

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or

reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Presidio Trust specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(9) Pursuant to the order of a court of competent jurisdiction; or

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information Act request made under this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Presidio Trust indicating that the record may not be fully accurate, complete, or timely.

§ 1008.10 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 1008.9(c), an accounting shall be made.

(2) The accounting shall record:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency and

(ii) The name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 1008.9(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of § 1008.13.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 1008.9(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

§ 1008.11 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the Privacy Act Officer, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052, unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT INQUIRY."

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (e.g., maiden name), shall include such information in the request.

§ 1008.12 Requests for notification of existence of records: Action on.

(a) *Decisions on request.* (1) Individuals inquiring to determine whether a system of records contains records pertaining to them shall be promptly advised whether the system contains records pertaining to them unless:

(i) The records were compiled in reasonable anticipation of a civil action or proceeding or

(ii) The system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individuals will be promptly notified that they are not entitled to notification of whether the system contains records pertaining to them.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the Privacy Act officer in consultation with the General Counsel.

(c) *Form of decision.* (1) No particular form is required for a decision informing individuals whether a system of records contains records pertaining to them.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him or her shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Advise the individual that an appeal of the declination may be made to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision declining a request for notification of the existence of records involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the declination may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions declining a request for notification of the existence of records made pursuant to paragraphs (c)(2) and (c)(3) of this section shall be provided to the Privacy Act Officer.

§ 1008.13 Requests for access to records.

The Privacy Act permits individuals, upon request, to gain access to their records or to any information pertaining to them which is contained in a system and to review the records and have a copy made of all or any portion thereof in a form comprehensive to them. 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this part.

§ 1008.14 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing and addressed to Privacy Act Officer, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 1008.15(d) the failure to state willingness to pay fees as high as are anticipated by the

Presidio Trust will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

§ 1008.15 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this part for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or

(2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this part shall be made by the Privacy Act Officer in consultation with the General Counsel.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 1008.15(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Contain a statement that the denial may be appealed to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision denying a request for access involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the declination may be made

only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (c)(2) and (c)(3) of this section will be provided to the Privacy Act Officer.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 1008.14.

(2) Unless the Privacy Act Officer determines that reduction or waiver of fees is appropriate, fees for copying a record in response to a request made under § 1008.14 shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Board and published in the compendium provided under § 1001.8 of this chapter.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the Privacy Act Officer shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 1008.16 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to records under the jurisdiction of another agency, individuals who have been notified that they are not entitled to notification of whether a system of records contains records pertaining to them or have been denied access, in whole or part, to a requested record may appeal to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received by the Executive Director no later than 20 working days after the date of the initial decision on a request.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within 20 working days of the date of the initial decision on the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Executive Director, Presidio Trust, P.O.

Box 29052, San Francisco, CA 94129-0052.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 1008.12 and 1008.14 shall be decided for the Presidio Trust by the Executive Director after consultation with the General Counsel.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 1008.17 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) Individuals wishing to inspect records pertaining to them which have been opened for their inspection may, during the inspection, be accompanied by a person of their own choosing.

(2) When such a procedure is deemed appropriate, individuals to whom the records pertain may be required to furnish a written statement authorizing discussion of their records in the accompanying person's presence.

§ 1008.18 Amendment of records.

The Privacy Act permits individuals to request amendment of records pertaining to them if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this part.

§ 1008.19 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted with respect to each system.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has

previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record for which amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 1008.20 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 1008.4.

(b) *Authority to decide.* A decision on a petition for amendment shall be made by the Privacy Act Officer in consultation with the General Counsel.

(c) *Acknowledgment of receipt.* Unless processing of a petition is completed within ten working days, the receipt of the petition for amendment shall be acknowledged in writing by the Privacy Act Officer.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 1008.19, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 1008.19.

(2) If the petitioner fails to submit the additional information within a reasonable time, the petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petition for amendment is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Advise the petitioner that the rejection may be appealed to the Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(iii) State that the appeal must be received by the foregoing official within 20 working days of the decision.

(3) If the petition for amendment involves records which fall under the jurisdiction of another agency and is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the rejection may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of rejections of petitions for amendment made pursuant to paragraphs (e)(2) and (e)(3) of this section will be provided to the Privacy Act Officer.

(f) *Implementation of initial decision.* If a petition for amendment is accepted, in whole or part, the system manager maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 1008.10, advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 1008.21 Petitions for amendment: Time limits for processing.

(a) *Acknowledgment of receipt.* The acknowledgment of receipt of a petition required by § 1008.20(c) shall be dispatched not later than ten working days after receipt of the petition by the Privacy Act Officer, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petition for amendment shall be made within 30 working days after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The 30 working day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 1008.20(d), that additional information in support of the petition is required. Running of the 30 working day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The 30 working day time limit for a decision on

a petition may be extended if the Privacy Act Officer determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the Privacy Act Officer is located.

(iii) Some or all of the challenged records are of concern to another agency of the Federal Government whose assistance and views are being sought in processing the request.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, the official shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 1008.22 Petitions for amendment: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to records under the jurisdiction of another agency, where a petition for amendment has been rejected in whole or in part, the individual submitting the petition may appeal the denial to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received no later than 20 working days after the date of the decision on a petition.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within 20 working days of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Executive Director, Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

§ 1008.23 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided by the Executive Director, in consultation with the General Counsel.

(b) *Time limit.* (1) A final determination on any appeal shall be made within 30 working days after receipt of the appeal.

(2) The 30 working day period for decision on an appeal may be extended,

for good cause shown, by the Executive Director. If the 30 working day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petition for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the Presidio Trust;

(ii) Of the procedure established by § 1008.24 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Presidio Trust, a brief statement by the Presidio Trust summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Presidio Trust's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petition for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosures has been made, advise all previous recipients of the record of the amendment and its substance.

§ 1008.24 Statements of disagreement.

(a) *Filing of statement.* If the determination of the Executive Director under § 1008.23 rejects in whole or part, a petition for amendment, the individual submitting the petition may file with the Privacy Act Officer a concise written statement setting forth the reasons for disagreement with the determination of the Presidio Trust.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section which occurs after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be

provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Presidio Trust for not making the requested amendments may also be provided to the recipient.

(c) *Maintenance of statements.* System managers shall develop procedures to assure that statements of disagreement filed with them shall be maintained in such a way as to assure dissemination of the statements to recipients of the records to which the statements pertain.

PART 1009—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

- 1009.1 Purpose.
- 1009.2 Procedure for filing claims.
- 1009.3 Denial of claims.
- 1009.4 Payment of claims.
- 1009.5 Indemnification of Presidio Trust directors and employees.

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note); 28 U.S.C. 2672.

§ 1009.1 Purpose.

The purpose of this part is to establish procedures for the filing and settlement of claims under the Federal Tort Claims Act (in part, 28 U.S.C. secs. 2401(b), 2671-2680, as amended by Pub. L. 89-506, 80 Stat. 306). The officers to whom authority is delegated to settle tort claims shall follow and be guided by the regulations issued by the Attorney General prescribing standards and procedures for settlement of tort claims (28 CFR part 14).

§ 1009.2 Procedure for filing claims.

(a) The procedure for filing and the contents of claims shall be pursuant to 28 CFR 14.2, 14.3 and 14.4.

(b) Claims shall be filed directly with the Presidio Trust.

(c) Upon receipt of a claim, the time and date of receipt shall be recorded. The claim shall be forwarded with the investigative file immediately to the General Counsel for determination.

§ 1009.3 Denial of claims.

Denial of a claim shall be communicated as provided by 28 CFR 14.9.

§ 1009.4 Payment of claims.

(a) When an award of \$2,500 or less is made, the voucher signed by the claimant shall be transmitted for payment to the Presidio Trust. When an award over \$2,500 is made, transmittal for payment will be made as prescribed by 28 CFR 14.10.

(b) Prior to payment, appropriate releases shall be obtained as provided in 28 CFR 14.10.

§ 1009.5 Indemnification of Presidio Trust directors and employees.

(a) The Presidio Trust may indemnify a Presidio Trust director or employee who is personally named as a defendant in any civil suit in state or federal court or an arbitration proceeding or other proceeding seeking damages against a Presidio Trust director or employee personally, for any verdict, judgment, or other monetary award which is rendered against such director or employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her duties or employment and that such indemnification is in the interest of the Presidio Trust as determined by

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(b) The Presidio Trust may settle or compromise a personal damage claim against a Presidio Trust director or employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of the duties or employment of the director or employee and that such settlement or compromise is in the

interest of the Presidio Trust as determined by:

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(c) The Presidio Trust will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award, unless exceptional circumstances exist as determined by:

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(d) A Presidio Trust director or employee may request indemnification to satisfy a verdict, judgment, or award entered against the director or employee. The director or employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the Presidio Trust shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Board for decision. In the event that a claim is made against the General Counsel, the Chair shall designate a director or employee of the Trust to fulfill the duties otherwise assigned to the General Counsel under this section.

(e) Any payment under this section either to indemnify a Presidio Trust director or employee or to settle a personal damage claim shall be contingent upon the availability of funds.

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