



DENNIS J. HERRERA  
City Attorney

January 29, 2002

## OPINION NO. 2002-02

SUBJECT: Presidio Taxes  
REQUESTED BY: Ed Harrington  
Controller  
PREPARED BY: Thomas J. Owen  
Deputy City Attorney

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You have asked us to advise you whether the City may collect taxes at the Presidio. As explained in greater detail below, federal law allows the City to collect the general sales and use tax on transactions at the Presidio. For example, if a tenant at the Presidio sells commemorative t-shirts, persons buying the shirts have to pay sales tax. The City may also collect its utility users tax on gas, water, and steam used by non-residential tenants at the Presidio. Federal law bars collection of any remaining City taxes. And the City may not collect the sales tax or the utility users tax from the Presidio Trust itself.

### **The Presidio is a Federal Enclave.**

The Presidio is located within the boundaries of the City and County of San Francisco, but the federal government owns it and has exclusive jurisdiction over it, with limited exceptions. Mexico ceded the Presidio to the United States in 1848 under the Treaty of Guadalupe Hidalgo. When California was admitted to the Union two years later, the Presidio passed to the State without any reservation of federal jurisdiction, although the federal government owned the property and occupied it as a military reservation at the time. (*U.S. v. Watkins* (N.D.Cal. 1927) 22 F.2d 437, 438.)

In 1897, California ceded to the federal government “*exclusive* jurisdiction over all lands within this state now held, occupied, or reserved by the government of the United States for military purposes or defense. . .” (Cal. Stats. 1897, ch. LVI, § 1, p. 51;

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emphasis added.)<sup>1</sup> The State reserved “the right to serve and execute” civil and criminal process. (*Ibid.*) The United States accepted jurisdiction over the Presidio. (*U.S. v. Watkins, supra*, 22 F.2d at pp. 439-40; see *Standard Oil v. California* (1934) 291 U.S. 242, 244.) The Presidio is now part of the Golden Gate National Recreation Area, and non-military branches of government manage the property as a public park. (Pub. L. 104-333, as amended (the Presidio Trust Act); 16 U.S.C. § 440bb.)<sup>2</sup>

**The Federal Government Has Exclusive Jurisdiction over Federal Enclaves.**

California’s cession of “exclusive jurisdiction” in 1897 refers to Article I, Section 8, Clause 17 of the United States Constitution (the Jurisdiction Clause). The Jurisdiction Clause grants Congress the power to “exercise exclusive legislation” over all places purchased with the consent of a State “for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.”<sup>3</sup> The power to exercise “exclusive legislation” is equivalent to “exclusive jurisdiction.” (*Surplus Trading Co. v. Cook* (1930) 281 U.S. 647, 652; *U.S. v. Bevans* (1818) 16 U.S. (3 Wheat.) 336, 388.) “The power of Congress over federal enclaves that come within the scope of [the Jurisdiction Clause] is obviously the same as the power of Congress over the District of Columbia. The cases make clear that the grant of ‘exclusive’ legislative power to Congress over enclaves that meet the requirements of [the Jurisdiction Clause] by its own weight, bars state regulation without specific congressional action.” (*Paul v. U.S.* (1963) 371 U.S. 245, 263.)

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<sup>1</sup> A copy of the statute is attached to this memorandum.

<sup>2</sup> A copy of the Presidio Trust Act is attached to this memorandum.

<sup>3</sup> The courts have construed “other needful buildings” to cover other, non-military properties, such as parks, dams, schools, post offices, and custom houses. (See, e.g., *Collins v. Yosemite Park* (1938) 304 U.S. 518, 528-30 [national park]; *James v. Dravo Contracting Co.* (1937) 302 U.S. 134, 142-43 [locks and dams]; *Battle v. U.S.* (1908) 209 U.S. 36, 37 [post office, courthouse].) The term has been extended to “whatever structures are found to be necessary in the performance of the functions of the federal government.” (*James v. Dravo Contracting Co., supra*, 302 U.S. at p. 143.)

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As discussed below, the jurisdiction asserted by the federal government over federal enclaves with respect to taxation precludes all but specifically enumerated types of taxes.

**Federal Immunity from Taxation vs. Exclusive Jurisdiction.**

There is a difference between federal immunity from taxation, which shields the federal government and its instrumentalities from State and local taxation, and exclusive federal jurisdiction over federal enclaves, which protects private persons and activities within the enclaves from State and local taxation.

Under the Supremacy Clause (U.S. Const. Art. VI, § 2), federal law is the “supreme law of the land.” No State or local entity may regulate the United States in a manner that burdens the federal government in the performance of its sovereign functions. Specifically, the Supremacy Clause prevents a State from taxing the operations of the United States. (*M’Culloch v. Maryland* (1819) 17 U.S. (4 Wheat.) 316, 436.) Local jurisdictions may tax companies doing business with the federal government, unless the tax levy “falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned.” (*California Credit Union League v. City of Anaheim* (9th Cir. 1996) 95 F.3d 30, 31, citing *U.S. v. New Mexico* (1982) 455 U.S. 720, 735.)<sup>4</sup>

But the jurisdictional issue is separate from the federal government’s immunity from taxation:

The question of exclusive territorial jurisdiction is distinct. That question assumes the absence of any interference with the exercise of the functions of the Federal government and is whether the United States has acquired exclusive legislative authority so as

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<sup>4</sup> The *California Credit Union League* decision was vacated and remanded by the United States Supreme Court on other grounds at 520 U.S. 1261 (1997). On remand, the Ninth Circuit affirmed the decision on the merits, “for the reasons set forth in [the original] opinion.” (*California Credit Union League v. City of Anaheim* (9th Cir. 1999) 190 F.3d 997, 1001-02.)

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to debar the State from exercising any legislative authority, including its taxing and policing power in relation to the property and activities of individuals and corporations within the territory.

(*Paul v. U.S.*, *supra*, 371 U.S. at p. 267, quoting *Silas Mason Co. v. Tax Commission* (1937) 302 U.S. 186, 197.)

“Exclusive jurisdiction as used in Article I means that not only is federal property immune from taxation but that state laws which have not been explicitly or implicitly adopted by the United States, including tax laws to which the United States has not consented, are ineffective over persons or property on the enclave.” (*U.S. v. Lewisburg Area School Dist.* (3rd Cir. 1976) 539 F.2d 301, 306, citing *S.R.A., Inc. v. Minnesota* (1946) 327 U.S. 558, 562-63.) Within a federal enclave, State and local laws are applicable only to the extent that State legislation reserved jurisdiction when it ceded jurisdiction to the federal government or Congress has granted effect to State and local laws. (*Ft. Leavenworth R. Co. v. Lowe* (1885) 114 U.S. 525, 537-38; *James v. Dravo Contracting Co.*, *supra*, 302 U.S. at p. 142; *Paul v. U.S.*, *supra*, 371 U.S. at pp. 263-65.)

**The Status of the Presidio.**

Both of these doctrines -- federal tax immunity and exclusive federal jurisdiction - - apply at the Presidio. As an instrumentality of the federal government, the Presidio Trust itself is immune from taxation. (*U.S. v. New Mexico*, *supra*, 455 U.S. at p. 735; *California Credit Union League v. City of Anaheim*, *supra*, 95 F.3d at p. 31.) The Trust was created specifically to carry out federal purposes on federal property. Section 103(c)(10)(A) of the Presidio Trust Act provides that the Trust is a “wholly owned Government corporation” under the Government Corporation Control Act (31 U.S.C. §§ 9101 *et seq.*). (See *Lebron v. National Railroad Passenger Corp.* (1995) 513 U.S. 374, 397-8 [Amtrak is an instrumentality of the United States for purposes of the First Amendment because of its status as a Government-created and –controlled corporation under the GCCA].)

In addition, the Presidio Trust Act explicitly confirms the Trust’s immunity from State and local taxes:

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The Trust and all properties administered by the Trust and all interest [sic] created under leases, concessions, permits and other agreements associated with the properties shall be exempt from all taxes and special assessments of every kind by the State of California, and its political subdivisions, including the City and County of San Francisco.

(Presidio Trust Act § 103(c)(9).) This provision makes clear Congress' intent that the Trust and its properties be exempt from State and local taxation. It also makes clear that the property interests of third parties under "leases, concessions, permits and other agreements associated with the properties" and issued by the Trust would also be immune.

The Presidio also falls under the federal government's exclusive jurisdiction. In *Standard Oil v. People, supra*, the United States Supreme Court held that the State of California could not tax persons and activities within the Presidio. (291 U.S. at pp. 244-45.) California had attempted to levy a tax of three cents per gallon on gasoline delivered to the Presidio. The Court noted that California had ceded exclusive jurisdiction over the Presidio to the federal government in 1897 with only one explicit exception: the State reserved the right to serve and execute civil and criminal process. "The state reserved to herself no power whatever in respect of taxation." (*Id.* at p. 244.)

**The Federal Government Has Authorized Limited State Taxation on Federal Enclaves.**

While enclaves such as the Presidio are subject to the federal government's exclusive jurisdiction, Congress has ceded back to State and local authorities some power to collect taxes. The Buck Act<sup>5</sup> authorizes state and local taxing authorities to collect a sales or use tax in a federal area:

No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having

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<sup>5</sup> A copy of the Buck Act is attached to this memorandum.

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jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(4 U.S.C. § 105(a).)<sup>6</sup>

The Buck Act also provides that state and local taxing authorities may impose an income tax on persons residing within a federal area, or on income from transactions occurring or services performed in such area:

No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing in a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(4 U.S.C. § 106(a).) The term “income tax” includes any tax levied on, with respect to, or measured by net income, gross income, or gross receipts. (4 U.S.C. § 110(c).)<sup>7</sup>

The Buck Act is a partial waiver of jurisdiction, but not of federal immunity. The statute does not authorize the imposition of any tax on the United States or any instrumentality of the United States.<sup>8</sup> (4 U.S.C. § 107(a).)

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<sup>6</sup> “Federal area” under the Buck Act means “any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.” (4 U.S.C. § 110(e).)

<sup>7</sup> In addition, federal law also authorizes the states to tax sales of motor vehicle fuels on military or other federal reservations (4 U.S.C. § 104), and to tax certain private leasehold interests on military property (“Wherry housing”). (10 U.S.C. § 2667(e).)

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The Trust itself, as an instrumentality of the federal government, is exempt from local taxation, including real property and business property taxes. The Trust Act also exempts tenants of the Trust from possessory interest taxes.

The City lacks jurisdiction to levy property-related taxes on other persons within the Presidio, because such taxes are not among those authorized under the Buck Act.

**Gross Receipts Tax.**

As discussed above, the Buck Act allows two types of taxes on federal enclaves such as the Presidio: an income tax, and a sales and use tax. The City does not have an income tax *per se*, but the Buck Act defines "income tax" broadly to include any tax levied on or measured by net income, gross income, or gross receipts. (4 U.S.C. § 110(c); *Howard v. Commissioners, Etc., of the City of Louisville* (1953) 344 U.S. 624, 629.) The term covers a "broad field" of taxes based on actual income of a business or some rough estimate or equivalent measure of business income. (See, e.g., *U.S. v. Lewisburg Area School Dist.*, *supra*, 539 F.2d at pp. 308-11.) The courts, however, will also prohibit imposing taxes where the relationship to income is too remote. (See *U.S. v. Denver* (D. Colo. 1983) 573 F.Supp. 686, 691-92 [city's per capita employment tax was not an income tax for purposes of the Buck Act, despite exemption for persons earning less than a threshold amount].)

San Francisco's current business tax is a payroll expense tax, based on the amount of qualifying compensation that a business pays to its employees. (S.F. Bus. & Tax Regs. Code §§ 902.6, 903, 903.1.)<sup>9</sup> It is very unlikely that a court would consider

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<sup>8</sup> Because the Presidio Trust Act addresses immunity and the Buck Act affects jurisdiction, there is no overlap between the two statutes.

<sup>9</sup> The City's gross receipts tax was repealed in April 2001. (SF Board of Supervisors' Ordinance No. 63-01.)

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the tax or the registration fee an income tax for purposes of the Buck Act.<sup>10</sup> The business registration fee is set according to the business' payroll expense tax liability. (S.F. Bus. & Tax Regs. Code § 855.) Neither is based on "net income, gross income, or gross receipts." Payroll expense, and the tax collected, bear no particular relationship to a business' receipts. They are not levied on any form of income and do not vary as the taxpayer's income varies. (*U.S. v. Denver, supra*, 573 F.Supp. at p. 692.)

**Sales and Use Tax.**

The Buck Act authorizes States and their subdivisions to collect sales and use taxes within federal areas such as the Presidio. (4 U.S.C. § 105.) San Francisco has a 8½ percent sales and use tax.<sup>11</sup> The City may collect that tax on transactions taking place at the Presidio, such as sales of souvenirs. The tax may not be levied on the federal government itself or its instrumentalities. (4 U.S.C. § 107.)

**Third-Party Taxes.**

The City imposes a number of taxes where the operator of a particular type of business collects taxes from his or her customers on behalf of the City. These third-party taxes include the hotel tax, the parking tax, and the utility users tax.<sup>12</sup> (S.F. Bus. & Tax Regs. Code, Arts. 7 [hotel], 9 [parking], 10 [utility users].) The City levies these taxes on the customer. But if the business fails to collect or turn over the taxes, the tax liability becomes a debt of the business to the City. (S.F. Bus. & Tax Regs. Code § 6.7-1(g).)

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<sup>10</sup> In Letter Opinion No. 76-59, the City Attorney advised that the payroll expense tax did not apply to payroll expenses generated on lands acquired by the United States prior to 1939. The City Attorney concluded, in part, that the City's gross receipts tax was an "income tax" for purposes of the Buck Act, but that the payroll expense tax was not.

<sup>11</sup> The first 7¼ percent of the tax is divided between the City and the State. One-half percent goes to the Bay Area Rapid Transit District and another ½ percent goes to the San Francisco County Transportation Authority. The remaining ¼ percent goes to the San Francisco County Public Finance Authority.

<sup>12</sup> The City also collects a stadium admission tax, but that tax is not a third-party tax. It is imposed on the stadium operator, not the person buying the ticket. (S.F. Bus. & Tax Regs. Code § 802.)

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Absent some express congressional authorization, states and local governments lack jurisdiction to tax even private persons and activities on a federal enclave. (*S.R.A., Inc. v. Minnesota, supra*, 327 U.S. at pp. 562-63.) Therefore, even though the City's third-party taxes generally would fall on private persons at the Presidio rather than on the federal government itself, the City lacks authority under federal law to collect those taxes except as specifically authorized under the Buck Act. For the reasons discussed below, the only third-party taxes that fall within the Buck Act are the utility users taxes on gas, water and steam services.

As discussed above, the Buck Act authorizes local jurisdictions to collect a sales and use tax on federal enclaves. (4 U.S.C. § 105.) "Sales and use tax" is defined in the Buck Act to mean

any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or *use of tangible personal property*, . . . [Emphasis added.]

(4 U.S.C. § 110(b).) While the Buck Act does not define "tangible personal property," the term is defined in California's Sales and Use Tax Law as "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." (Cal. Rev. & Tax. Code § 6016.)

Most of the City's third-party taxes are not levied on "sales, receipts from sales, purchases, storage, or use of tangible personal property," and therefore are not sales and use taxes under the Buck Act. The hotel tax is levied on "the rent for every occupancy of a guest room." (S.F. Bus. & Tax Regs. Code § 502.) The parking tax is levied on "the rent of every occupancy of parking space in a parking station." (S.F. Bus. & Tax Regs. Code § 602.) To the extent that gas, water and steam are tangible personal property, the utility user taxes on use of gas, water, and steam meet the Buck Act definition of a sales and use tax.<sup>13</sup> (S.F. Bus. & Tax Regs. Code §§ 705, 706,

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<sup>13</sup> The City's utility users tax need not be a sales and use tax for state law purposes to qualify as a permissible sales and use tax under the Buck Act. (See *Reynolds v. South Carolina Tax Comm.* (S.C. 1968) 162 S.E.2d 259, 262 [state's license tax on soft drink syrup a use tax for purposes of Buck Act]; see also *Howard v. Commissioners, Etc., of the City of Louisville, supra*, 344 U.S. at pp. 628-29 [municipal occupational license tax was an income tax for purposes of Buck Act, even though it was not an income tax under state law].)

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706.1.) The utility users taxes on use of intrastate telephone communication services and electrical energy do not involve tangible personal property. (S.F. Bus. & Tax Regs. Code §§ 703, 704.)

There may be some practical limits on the collection of the utility user taxes on gas, water, and steam at the Presidio. First, the Presidio does not use any steam utility at this time.

Second, the utility users tax is not applicable to residential customers. (S.F. Bus. & Tax Regs. Code § 707.1.) Only commercial tenants at the Presidio are potentially subject to these taxes.

Third, the Presidio receives only some of its water from the City's system; the rest is provided by the Presidio's own water system. The utility users tax applies to water "delivered through mains and pipes in the City and County." (S.F. Bus. & Tax Regs. Code § 706.) On its face, the Presidio's distribution system consists of "mains and pipes in the City and County." (See *Howard v. Commissioners, Etc., of the City of Louisville, supra*, 344 U.S. at p. 467 [site of naval ordnance plant was within the City of Louisville for purposes of taxation, so long as the city did not interfere with the exercise of jurisdiction within the federal area by the United States].) But a court might conclude that the Presidio's own water system was not subject to the tax, because its "mains and pipes" are located within the enclave, and not "in the City and County."

Finally, a person operating a business subject to any of these taxes is liable for the tax if it is not collected from the customer in the first instance or if the tax paid by the customer is not remitted by the operator to the Tax Collector. (S.F. Bus. & Tax Regs. Code §§ 6.7-1(d), (g) [general administrative provisions], 708 [utility users tax].) It is possible that a court might find that the legal incidence of the tax therefore falls on the operator rather than the customer. (See *United States v. State Tax Commission of Mississippi* (1975) 421 U.S. 599, 610 [state tax on liquor sales, which was levied on distillers but which by law had to be passed on to customers, held to be a tax on customers and could not be applied to instrumentalities of the United States].)

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To summarize, the federal government has exclusive jurisdiction over the Presidio, so the City may only collect those taxes authorized under the Buck Act. The City may collect the general sales and use tax at the Presidio. The City may also collect its utility users tax on gas, water and steam used by non-residential tenants at the Presidio. The City may not collect the sales tax or the utility users tax from the Presidio Trust itself.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

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Thomas J. Owen  
Deputy City Attorney

APPROVED:

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DENNIS J. HERRERA  
City Attorney

## California Statutes of 1897, Chapter LVI

*An Act ceding to the United States of America jurisdiction over all lands within this State which have been or may hereafter be acquired by the United States for military purposes.*

[Approved March 2, 1897]

*The People of the State of California, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes; *provided*, that a sufficient description by metes and bounds and a map or plat of such lands be filed in the proper office of record in the county in which the same are situated; *and provided further*, that this State reserves the right to serve and execute on said lands all civil process, not incompatible with this cession, and such criminal process as may lawfully issue under the authority of this State against any person or persons charged with crimes committed without said lands.

SEC. 2. This Act shall take effect immediately.

## PRESIDIO TRUST ACT

(Pub. L. 104-333, div. I, title I, Nov. 12, 1996, 110 Stat. 4097, as amended)\*

### Sec. 101. Findings.

The Congress finds that—

(1) the Presidio, located amidst the incomparable scenic splendor of the Golden Gate, is one of America's great natural and historic sites;

(2) the Presidio was the oldest continuously operated military post in the Nation dating from 1776, and was designated a National Historic Landmark in 1962;

(3) preservation of the cultural and historic integrity of the Presidio for public use recognizes its significant role in the history of the United States;

(4) the Presidio, in its entirety, is a part of the Golden Gate National Recreation Area, in accordance with Public Law 92-589 [16 U.S.C. 460bb et seq.];

(5) as part of the Golden Gate National Recreation Area, the Presidio's significant natural, historic, scenic, cultural, and recreational resources must be managed in a manner which is consistent with sound principles of land use planning and management, and which protects the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area and cultural and recreational resources;

(6) removal and/or replacement of some structures within the Presidio must be considered as a management option in the administration of the Presidio; and

(7) the Presidio will be managed through an innovative public/private partnership that minimizes cost to the United States Treasury and makes efficient use of private sector resources.

### Sec. 102. Authority and Responsibility of the Secretary of the Interior.

(a) **Interim Authority.** -- The Secretary of the Interior (hereinafter in this title referred to as the 'Secretary') is authorized to manage leases in existence on

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\* Set out as a note to 16 U.S.C. §460bb, establishing the Golden Gate National Recreation Area.

the date of this Act [Nov. 12, 1996] for properties under the administrative jurisdiction of the Secretary and located at the Presidio. Upon the expiration of any such lease, the Secretary may extend such lease for a period terminating not later than 6 months after the first meeting of the Presidio Trust. The Secretary may not enter into any new leases for property at the Presidio to be transferred to the Presidio Trust under this title, however, the Secretary is authorized to enter into agreements for use and occupancy of the Presidio properties which are assignable to the Trust and are terminable with 30 days notice. Prior to the transfer of administrative jurisdiction over any property to the Presidio Trust, and notwithstanding section 1341 of title 31 of the United States Code, the proceeds from any such lease shall be retained by the Secretary and such proceeds shall be available, without further appropriation, for the preservation, restoration, operation and maintenance, improvement, repair and related expenses incurred with respect to Presidio properties. The Secretary may adjust the rental charge on any such lease for any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, repair and related expenses with respect to properties and infrastructure within the Presidio.

(b) **Public Information and Interpretation.** -- The Secretary shall be responsible, in cooperation with the Presidio Trust, for providing public interpretive services, visitor orientation and educational programs on all lands within the Presidio.

(c) **Other.** -- Those lands and facilities within the Presidio that are not transferred to the administrative jurisdiction of the Presidio Trust shall continue to be managed by the Secretary. The Secretary and the Presidio Trust shall cooperate to ensure adequate public access to all portions of the Presidio. Any infrastructure and building improvement projects that were funded prior to the enactment of this Act [Nov. 12, 1996] shall be completed by the National Park Service.

(d) **Park Service Employees.** -- (1) Any career employee of the National Park Service, employed at the Presidio at the time of the transfer of lands and facilities to the Presidio Trust, shall not be separated from the Service by reason of such transfer, unless such employee is employed by the Trust, other than on detail. Notwithstanding section 3503 of title 5, United States Code, the Trust shall have sole discretion over whether to hire any such employee or request a detail of such employee.

(2) Any career employee of the National Park Service employed at the Presidio on the date of enactment of this title [Nov. 12, 1996] shall be given priority placement for any available position within the National Park System notwithstanding any priority reemployment lists, directives, rules, regulations or other orders from the Department of the Interior, the Office of Management and Budget, or other Federal agencies.

### **Sec. 103. Establishment of the Presidio Trust.**

(a) **Establishment.** -- There is established a wholly owned government corporation to be known as the Presidio Trust (hereinafter in this title referred to as the 'Trust').

(b) **Transfer.** -- (1) Within 60 days after receipt of a request from the Trust for the transfer of any parcel within the area depicted as Area B on the map entitled 'Presidio Trust Number 1', dated December 7, 1995, the Secretary shall transfer such parcel to the administrative jurisdiction of the Trust. Within 1 year after the first meeting of the Board of Directors of the Trust, the Secretary shall transfer to the Trust administrative jurisdiction over all remaining parcels within Area B. Such map shall be on file and available for public inspection in the offices of the Trust and in the offices of the National Park Service, Department of the Interior. The Trust and the Secretary may jointly make technical and clerical revisions in the boundary depicted on such map. The Secretary shall retain jurisdiction over those portions of the building identified as number 102 as the Secretary deems essential for use as a visitor center. The Building shall be named the 'William Penn Mott Visitor Center'. Any parcel of land, the jurisdiction over which is transferred pursuant to this subsection, shall remain within the boundary of the Golden Gate National Recreation Area. With the consent of the Secretary, the Trust may at any time transfer to the administrative jurisdiction of the Secretary any other properties within the Presidio which are surplus to the needs of the Trust and which serve essential purposes of the Golden Gate National Recreation Area. The Trust is encouraged to transfer to the administrative jurisdiction of the Secretary open space areas which have high public use potential and are contiguous to other lands administered by the Secretary.

(2) Within 60 days after the first meeting of the Board of Directors of the Trust, the Trust and the Secretary shall determine cooperatively which records, equipment, and other personal property are deemed to be necessary for the immediate administration of the properties to be transferred, and the Secretary shall immediately transfer such personal property to the Trust. Within 1 year after the first meeting of the Board of Directors of the Trust, the Trust and the Secretary shall determine cooperatively what, if any, additional records, equipment, and other personal property used by the Secretary in the administration of the properties to be transferred should be transferred to the Trust.

(3) The Secretary shall transfer, with the transfer of administrative jurisdiction over any property, the unobligated balance of all funds appropriated

to the Secretary, all leases, concessions, licenses, permits, and other agreements affecting such property.

(4) At the request of the Trust, the Secretary shall provide funds to the Trust for preparation of the program required under section 104(c) of this title, hiring of initial staff and other activities deemed by the Trust as essential to the establishment of the Trust prior to the transfer of properties to the Trust.

(c) **Board of Directors.** --

(1) **In general.** -- The powers and management of the Trust shall be vested in a Board of Directors (hereinafter referred to as the 'Board') consisting of the following 7 members:

(A) The Secretary of the Interior or the Secretary's designee.

(B) 6 individuals, who are not employees of the Federal Government, appointed by the President, who shall possess extensive knowledge and experience in one or more of the fields of city planning, finance, real estate development, and resource conservation. At least one of these individuals shall be a veteran of the Armed Services. At least 3 of these individuals shall reside in the San Francisco Bay Area. The President shall make the appointments referred to in this subparagraph within 90 days after the enactment of this Act [Nov. 12, 1996] and shall ensure that the fields of city planning, finance, real estate development, and resource conservation are adequately represented. Upon establishment of the Trust, the Chairman of the Board of Directors of the Trust shall meet with the Chairman of the Energy and Natural Resources Committee of the United States Senate and the Chairman of the Resources Committee of the United States House of Representatives.

(2) **Terms.** -- Members of the Board appointed under paragraph (1)(B) shall each serve for a term of 4 years, except that of the members first appointed, 3 shall serve for a term of 2 years. Any vacancy in the Board shall be filled in the same manner in which the original appointment was made, and any member appointed to fill a vacancy shall serve for the remainder of that term for which his or her predecessor was appointed. No appointed member may serve more than 8 years in consecutive terms, except that upon the expiration of his or her term, an appointed member may continue to serve until his or her successor has been appointed.

(3) **Quorum.** -- Four members of the Board shall constitute a quorum for the conduct of business by the Board.

(4) **Organization and compensation.** -- The Board shall organize itself in such a manner as it deems most appropriate to effectively carry out the authorized activities of the Trust. Board members shall serve without pay, but

may be reimbursed for the actual and necessary travel and subsistence expenses incurred by them in the performance of the duties of the Trust.

(5) **Liability of directors.** -- Members of the Board of Directors shall not be considered Federal employees by virtue of their membership on the Board, except for purposes of the Federal Tort Claims Act [28 U.S.C. 1346(b), 2671 et seq.] and the Ethics in Government Act [of 1978] [5 App. U.S.C.], and the provisions of chapter 11 of title 18, United States Code.

(6) **Meetings.** -- The Board shall meet at least three times per year in San Francisco and at least two of those meetings shall be open to the public. Upon a majority vote, the Board may close any other meetings to the public. The Board shall establish procedures for providing public information and opportunities for public comment regarding policy, planning, and design issues. The Board may establish procedures for providing public information and opportunities for public comment regarding policy, planning, and design issues through the Golden Gate National Recreation Area Advisory Commission.

(7) **Staff.** -- Notwithstanding any other provisions of law, the Trust is authorized to appoint and fix the compensation and duties and terminate the services of an executive director and such other officers and employees as it deems necessary without regard to the provisions of title 5, United States Code, or other laws related to the appointment, compensation or termination of Federal employees.

(8) **Necessary powers.** -- The Trust shall have all necessary and proper powers for the exercise of the authorities vested in it.

(9) **Taxes.** -- The Trust and all properties administered by the Trust and all interest created under leases, concessions, permits and other agreements associated with the properties shall be exempt from all taxes and special assessments of every kind by the State of California, and its political subdivisions, including the City and County of San Francisco.

(10) **Government corporation.** -- (A) The Trust shall be treated as a wholly owned Government corporation subject to chapter 91 of title 31, United States Code (commonly referred to as the Government Corporation Control Act). Financial statements of the Trust shall be audited annually in accordance with section 9105 of title 31 of the United States Code.

(B) At the end of each calendar year, the Trust shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives a comprehensive and detailed report of its operations, activities, and accomplishments for the prior fiscal year. The report also shall include a section that describes in general terms the Trust's goals for the current fiscal year.

## **Sec. 104. Duties and Authorities of the Trust.**

(a) **Overall Requirements of the Trust.** -- The Trust shall manage the leasing, maintenance, rehabilitation, repair and improvement of property within the Presidio under its administrative jurisdiction using the authorities provided in this section, which shall be exercised in accordance with the purposes set forth in section 1 of the Act entitled 'An Act to establish the Golden Gate National Recreation Area in the State of California, and for other purposes', approved October 27, 1972 (Public Law 92-589; 86 Stat. 1299; 16 U.S.C. 460bb), and in accordance with the general objectives of the General Management Plan (hereinafter referred to as the 'management plan') approved for the Presidio.

(b) **Authorities.** -- The Trust may participate in the development of programs and activities at the properties transferred to the Trust, except that the Trust shall have the authority to negotiate and enter into such agreements, leases, contracts and other arrangements with any person, firm, association, organization, corporation or governmental entity, including, without limitation, entities of Federal, State and local governments as are necessary and appropriate to carry out its authorized activities. The National Park Service or any other Federal agency is authorized to enter into agreements, leases, contracts and other arrangements with the Presidio Trust which are necessary and appropriate to carry out the purposes of this title. Any such agreement may be entered into without regard to section 321 of the Act of June 30, 1932 (40 U.S.C. 303b). The Trust may use alternative means of dispute resolution authorized under subchapter IV of chapter 5 of title 5, United States Code (5 U.S.C. 571 et seq.). The Trust shall establish procedures for lease agreements and other agreements for use and occupancy of Presidio facilities, including a requirement that in entering into such agreements the Trust shall obtain reasonable competition. The Trust may not dispose of or convey fee title to any real property transferred to it under this title. Federal laws and regulations governing procurement by Federal agencies shall not apply to the Trust, with the exception of laws and regulations related to Federal government contracts governing working conditions and wage rates, including the provisions of sections 276a-276a-6 of title 40, United States Code (Davis-Bacon Act), and any civil rights provisions otherwise applicable thereto. The Trust, in consultation with the Administrator of Federal Procurement Policy, shall establish and promulgate procedures applicable to the Trust's procurement of goods and services including, but not limited to, the award of contracts on the basis of contractor qualifications, price, commercially reasonable buying practices, and reasonable competition. The Trust is authorized to use funds available to the Trust to purchase insurance and for reasonable reception and representation expenses, including membership dues, business cards and business related meal expenditures.

(c) **Management Program.** -- The Trust shall develop a comprehensive program for management of those lands and facilities within the Presidio which are transferred to the administrative jurisdiction of the Trust. Such program shall be designed to reduce expenditures by the National Park Service and increase revenues to the Federal Government to the maximum extent possible. In carrying out this program, the Trust shall be treated as a successor in interest to the National Park Service with respect to compliance with the National Environmental Policy Act [of 1969] [42 U.S.C. 4321 et seq.] and other environmental compliance statutes. Such program shall consist of--

(1) demolition of structures which in the opinion of the Trust, cannot be cost-effectively rehabilitated, and which are identified in the management plan for demolition,

(2) evaluation for possible demolition or replacement those buildings identified as categories 2 through 5 in the Presidio of San Francisco Historic Landmark District Historic American Buildings Survey Report, dated 1985,

(3) new construction limited to replacement of existing structures of similar size in existing areas of development, and

(4) examination of a full range of reasonable options for carrying out routine administrative and facility management programs.

The Trust shall consult with the Secretary in the preparation of this program.

(d) **Financial Authorities.** -- (1) To augment or encourage the use of non-Federal funds to finance capital improvements on Presidio properties transferred to its jurisdiction, the Trust, in addition to its other authorities, shall have the following authorities subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.):

(A) The authority to guarantee any lender against loss of principal or interest on any loan: Provided, That--

(i) the terms of the guarantee are approved by the Secretary of the Treasury;

(ii) adequate subsidy budget authority is provided in advance in appropriations Acts; and

(iii) such guarantees are structured so as to minimize potential cost to the Federal Government. No loan guarantee under this title shall cover more than 75 percent of the unpaid balance of the loan. The Trust may collect a fee sufficient to cover its costs in connection with each loan guaranteed under this title. The

authority to enter into any such loan guarantee agreement shall expire at the end of 15 years after the date of enactment of this title [Nov. 12, 1996].

(B) The authority, subject to appropriations, to make loans to the occupants of property managed by the Trust for the preservation, restoration, maintenance, or repair of such property.

(2) The Trust shall also have the authority to issue obligations to the Secretary of the Treasury, but only if the Secretary of the Treasury agrees to purchase such obligations to the extent authorized in advance in appropriations acts. The Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such notes or obligations acquired by the Secretary of the Treasury under this subsection. Obligations issued under this subparagraph shall be in such forms and denominations, bearing such maturities, and subject to such terms and conditions, including a review of the creditworthiness of the loan and establishment of a repayment schedule, as may be prescribed by the Secretary of the Treasury, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. No funds appropriated to the Trust may be used for repayment of principal or interest on, or redemption of, obligations issued under this paragraph.

(3) The aggregate amount of obligations issued under paragraph (2) of this subsection which are outstanding at any one time may not exceed \$50,000,000.

(e) **Donations.** -- The Trust may solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other private or public entities for the purpose of carrying out its duties. The Trust is encouraged to maintain a liaison with the Golden Gate National Park Association.

(f) **Public Agency.** -- The Trust shall be deemed to be a public agency for purposes of entering into joint exercise of powers agreements pursuant to California government code section 6500 and related provisions of that Code.

(g) **Financial Management.** -- Notwithstanding section 1341 of title 31 of the United States Code, all proceeds and other revenues received by the Trust shall be retained by the Trust. Those proceeds shall be available, without further appropriation, to the Trust for the administration, preservation, restoration, operation and maintenance, improvement, repair and related expenses incurred with respect to Presidio properties under its administrative jurisdiction. The Secretary of the Treasury shall invest, at the direction of the Trust, such excess

moneys that the Trust determines are not required to meet current withdrawals. Such investment shall be in public debt securities with maturities suitable to the needs of the Trust and bearing interest at rates determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(h) **Suits.** -- The Trust may sue and be sued in its own name to the same extent as the Federal Government. Litigation arising out of the activities of the Trust shall be conducted by the Attorney General; except that the Trust may retain private attorneys to provide advice and counsel. The District Court for the Northern District of California shall have exclusive jurisdiction over any suit filed against the Trust.

(i) **Memorandum of Agreement.** -- The Trust shall enter into a Memorandum of Agreement with the Secretary, acting through the Chief of the United States Park Police, for the conduct of law enforcement activities and services within those portions of the Presidio transferred to the administrative jurisdiction of the Trust.

(j) **Bylaws, Rules, and Regulations.** -- The Trust may adopt, amend, repeal, and enforce bylaws, rules and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised, including rules and regulations for the use and management of the property under the Trust's jurisdiction. The Trust is authorized, in consultation with the Secretary, 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 this title. The Trust shall give notice of the adoption of such rules and regulations by publication in the Federal Register.

(k) **Direct Negotiations.** -- For the purpose of compliance with applicable laws and regulations concerning properties transferred to the Trust by the Secretary, the Trust shall negotiate directly with regulatory authorities.

(l) **Insurance.** -- The Trust shall require that all leaseholders and contractors procure proper insurance against any loss in connection with properties under lease or contract, or the authorized activities granted in such lease or contract, as is reasonable and customary.

(m) **Building Code Compliance.** -- The Trust shall bring all properties under its administrative jurisdiction into compliance with Federal building codes and regulations appropriate to use and occupancy within 10 years after the enactment of this title [Nov. 12, 1996] to the extent practicable.

(n) **Leasing.** -- In managing and leasing the properties transferred to it, the Trust shall consider the extent to which prospective tenants contribute to the

implementation of the general objectives of the General Management Plan for the Presidio and to the reduction of cost to the Federal Government. The Trust shall give priority to the following categories of tenants: Tenants that enhance the financial viability of the Presidio and tenants that facilitate the cost-effective preservation of historic buildings through their reuse of such buildings.

(o) **Reversion.** -- If, at the expiration of 15 years, the Trust has not accomplished the goals and objectives of the plan required in section 105(b) of this title, then all property under the administrative jurisdiction of the Trust pursuant to section 103(b) of this title shall be transferred to the Administrator of the General Services Administration to be disposed of in accordance with the procedures outlined in the Defense Authorization Act of 1990 (104 Stat. 1809) [probably means part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, set out as a note under section 2687 of Title 10, Armed Forces], and any real property so transferred shall be deleted from the boundary of the Golden Gate National Recreation Area. In the event of such transfer, the terms and conditions of all agreements and loans regarding such lands and facilities entered into by the Trust shall be binding on any successor in interest.

(p) **Exclusive Rights to Name and Insignia.** -- The Trust shall have the sole and exclusive right to use the words 'Presidio Trust' and any seal, emblem, or other insignia adopted by its Board of Directors. Without express written authority of the Trust, no person may use the words 'Presidio Trust', or any combination or variation of those words alone or with other words, as the name under which that person shall do or purport to do business, for the purpose of trade, or by way of advertisement, or in any manner that may falsely suggest any connection with the Trust.

## **Sec. 105. Limitations on Funding.**

(a)(1) From amounts made available to the Secretary for the operation of areas within the Golden Gate National Recreation Area, not more than \$25,000,000 shall be available to carry out this title in each fiscal year after the enactment of this title [Nov. 12, 1996] until the plan is submitted under subsection (b). Such sums shall remain available until expended.

(2) After the plan required in subsection (b) is submitted, and for each of the 14 fiscal years thereafter, there are authorized to be appropriated to the Trust not more than the amounts specified in such plan. Such sums shall remain available until expended. Of such sums, funds shall be available through the Trust for law enforcement activities and services to be provided by the United States Park Police at the Presidio in accordance with section 104(i) of this title.

(b) Within 1 year after the first meeting of the Board of Directors of the Trust, the Trust shall submit to Congress a plan which includes a schedule of

annual decreasing federally appropriated funding that will achieve, at a minimum, self-sufficiency for the Trust within 15 complete fiscal years after such meeting of the Trust. No further funds shall be authorized for the Trust 15 years after the first meeting of the Board of Directors of the Trust.

(c) The Administrator of the General Services Administration shall provide necessary assistance, on a reimbursable basis, including detailees as necessary, to the Trust in the formulation and submission of the annual budget request for the administration, operation, and maintenance of the Presidio.

### **Sec. 106. General Accounting Office Study.**

(a) Three years after the first meeting of the Board of Directors of the Trust, the General Accounting Office shall conduct an interim study of the activities of the Trust and shall report the results of the study to the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate, and the Committee on Resources and Committee on Appropriations of the House of Representatives. The study shall include, but shall not be limited to, details of how the Trust is meeting its obligations under this title.

(b) In consultation with the Trust, the General Accounting Office shall develop an interim schedule and plan to reduce and replace the Federal appropriations to the extent practicable for interpretive services conducted by the National Park Service, and law enforcement activities and services, fire and public safety programs conducted by the Trust.

(c) Seven years after the first meeting of the Board of Directors of the Trust, the General Accounting Office shall conduct a comprehensive study of the activities of the Trust, including the Trust's progress in meeting its obligations under this title, taking into consideration the results of the study described in subsection (a) and the implementation of plan and schedule required in subsection (b). The General Accounting Office shall report the results of the study, including any adjustments to the plan and schedule, to the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate, and the Committee on Resources and Committee on Appropriations of the House of Representatives.

## **BUCK ACT**

### **(4 U.S.C. §§ 105 *et seq.*)**

#### **Sec. 105. State, and so forth, taxation affecting Federal areas; sales or use tax.**

(a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940.

#### **Sec. 106. Same; income tax.**

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

#### **Sec. 107. Same; exception of United States, its instrumentalities, and authorized purchases therefrom.**

(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch.

**Sec. 108. Same; jurisdiction of United States over Federal areas unaffected.**

The provisions of sections 105-110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

**Sec. 109. Same; exception of Indians.**

Nothing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed.

**Sec. 110. Same; definitions.**

As used in sections 105-109 of this title--

(a) The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency, of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

**Sec. 111. Same; taxation affecting Federal employees; income tax.**

(a) General Rule.--The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.

(b) Treatment of Certain Federal Employees Employed at Federal Hydroelectric Facilities Located on the Columbia River.-- Pay or compensation paid by the United States for personal services as an employee of the United States at a hydroelectric facility --

- (1) which is owned by the United States;
- (2) which is located on the Columbia River; and
- (3) portions of which are within the States of Oregon and Washington,

shall be subject to taxation by the State or any political subdivision thereof of which such employee is a resident.

(c) Treatment of Certain Federal Employees Employed at Federal Hydroelectric Facilities Located on the Missouri River -- Pay or compensation paid by the United States for personal services as an employee of the United States at a hydroelectric facility --

- (1) which is owned by the United States;
- (2) which is located on the Missouri River; and
- (3) portions of which are within the States of South Dakota and Nebraska,

shall be subject to taxation by the State or any political subdivision thereof of which such employee is a resident.