

Appendix B to Part 4044—Interest Rates Used To Value Benefits

For valuation dates occurring in the month—	The values of i_t are					
	i_t	for t =	i_t	for t =	i_t	for t =
October 20000700	1–25	.0625	>25	N/A	N/A

Issued in Washington, DC, on this 8th day of September 2000.

David M. Strauss,
Executive Director, Pension Benefit Guaranty Corporation.

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PRESIDIO TRUST

36 CFR Part 1010

RIN 3212–AA02

Management of the Presidio: Environmental Quality

AGENCY: The Presidio Trust.

ACTION: Final rule.

SUMMARY: The Presidio Trust (Trust) was created by Congress in 1996 to manage a portion of the former U.S. Army base known as The Presidio of San Francisco, California. 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. Pursuant to the National Environmental Policy Act of 1969 (NEPA), the Trust adopted interim procedures and guidelines for implementing NEPA, which generally consisted of the NEPA procedures and guidelines of the NPS, pending promulgation of the Trust’s own regulations for implementing NEPA. See 63 FR 49142 (Sept. 14, 1998). The Trust proposed its own NEPA regulations on July 23, 1999 (64 FR 39951) and accepted comments from the public until October 5, 1999, following an extension of the comment period (64 FR 51488). Today, the Trust publishes its response to comments received, as well as its final rule on this topic.

DATES: This final rule is effective October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION:

Background

The Presidio Trust is a wholly-owned government corporation created

pursuant to Title I of the Omnibus Parks and Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097 (the Trust Act). Pursuant to section 103(b) of the Trust Act, on July 1, 1998, 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 Trust Act.

Pursuant to its rulemaking authority and the regulations of the Council on Environmental Quality (CEQ) at 40 CFR 1507.3(a), the Trust—in consultation with CEQ—initially adopted existing NPS NEPA policy guidance, to the extent it did not conflict with the Presidio Trust Act or regulations of the Presidio Trust, as its interim procedures and guidelines for implementing NEPA. These interim procedures and guidelines are found in “NPS–12: National Environmental Policy Act Guidelines” (1982) as supplemented by NPS’s “Standard Operating Procedure 601.” Notice of the Trust’s adoption of these interim procedures was published in the **Federal Register** on September 14, 1998 (63 FR 49142). These interim procedures and guidelines will remain in effect until the effective date of the final regulations published today. Upon the effective date, the final regulations will replace the interim procedures and guidelines in their entirety.

Prior to proposing these regulations, and finalizing them today, the Trust consulted with CEQ pursuant to CEQ’s regulations, 40 CFR 1507.3(a). The Trust also consulted with officials of the Department of the Interior and the National Park Service designated by the Secretary of the Interior to facilitate such consultation. An initial draft of the proposed regulations was modified in response to these comments prior to its publication in the **Federal Register** on July 23, 1999 (64 FR 39951).

The Trust originally provided for a public comment period of 60 days on its proposed NEPA regulations. See 64 FR 39951. Upon request of the commenters, that period was later extended by approximately two weeks. See 64 FR 51488. The Trust has considered the comments received within the comment period, as extended, and today publishes its responses to those comments and its final NEPA

regulations. As of its effective date, this final rule supersedes the Trust’s adoption of interim procedures and guidelines for implementing NEPA.

Summary of the Proposed Rule

The proposed rule, including a section-by-section analysis, was set forth in detail in the July 23, 1999 issue of the **Federal Register** (64 FR 39951). In general, the proposed rule—and the final rule presented herein—follows the fundamental NEPA process that Federal agencies follow. The rule is intended to supplement the regulations of CEQ and not to paraphrase or repeat those regulations. See 40 CFR 1507.3.

Under the rule as proposed and finalized, the Trust would first determine whether a proposed action by the Trust is one that normally does not require either an environmental assessment (EA) or an environmental impact statement (EIS), *i.e.*, whether the proposed action is categorically excluded from NEPA review or has been covered by a previous EA and/or EIS. If it is not such an action, then the Trust would consider whether the action is one that normally requires an EIS. If so, an EIS would normally be prepared.

If the action is not one that is categorically excluded from further NEPA review or has not been previously analyzed in an EA or EIS, and if the action also is not one that normally requires an EIS, then an EA would normally be prepared. Following preparation of the EA, the Trust would make a determination as to whether the proposed action requires further review in an EIS or whether the Trust may, on the basis of the review performed in the EA, issue a finding of no significant impact (FONSI). Under the rule, the Trust could not undertake the proposed action unless (1) it is categorically excluded; or (2) an EIS has been finalized and a Record of Decision has been issued; or (3) a FONSI has been issued on the basis of an EA.

The final rule adopted by the Trust will replace in its entirety the Trust’s adoption of interim procedures and guidelines for implementing NEPA. The final rule is similar to the proposed rule, particularly in structure and format, but its content has been modified in a number of respects in response to comments received and further review

by the Trust. These modifications are discussed below.

Summary of Comments and Responses

The Trust received two submissions in response to its request for comments on the proposed rule. A three-page letter together with 10 pages of comments was submitted by the NPS, and a 13-page letter was submitted collectively on behalf of the following private organizations: As You Sow, the California Native Plant Society, the Golden Gate Audubon Society, the Ecology Center, the National Parks and Conservation Association, the National Trust for Historic Preservation, the Natural Resources Defense Council, the San Francisco League of Conservation Voters, San Francisco Tomorrow, The Wilderness Society, and the Tides Foundation (collectively referred to hereinafter as AYS). Summarized below are the significant comments contained in these two submissions—many of which are almost identical—and the Trust's responses to those comments. Because these responses in some cases have resulted in redesignations of sections and paragraphs from the proposed regulations, references to section and paragraph numbers in the following discussion—unless otherwise noted—correspond to the designations used in the proposed regulations that were published in the **Federal Register** on July 23, 1999 (63 FR 39951).

The Trust's Choice for the Structure of the Regulations

The Trust relied primarily on the NPS NEPA procedures for the substance of its regulations, including NPS's categorical exclusions, and borrowed heavily from those aspects of NPS-12 that are well-suited to binding regulations and to the Trust's unique mandate and activities. In some instances, the Trust also looked to the NPS's draft revision of NPS-12 for the substance of its regulations. For purposes of one categorical exclusion (which has been substantially revised in these final regulations) the Trust looked to the NEPA procedures of the Department of Housing and Urban Development (HUD). The structure and format of the Trust's regulations were drawn primarily from the regulations of the former Pennsylvania Avenue Development Corporation (PADC) found at 36 CFR part 907, for a number of reasons that are discussed more fully below and in the preamble to the proposed rule. See 64 FR 39951, 39953-56 (July 23, 1999). The Trust has maintained that format in these final regulations.

The result is that the substance of today's final rule does not differ significantly from that of the NPS procedures. For example, the current version of NPS-12 (at section 1-2) provides an "overview" of the NEPA process that is as much a foundation of the Trust's final regulations as it is of the NPS guidelines:

If the proposed action is adequately evaluated in a previous environmental document, or is contained in the * * * lists of categorical exclusions, and is not a(n) * * * exception * * *, further NEPA compliance is not required. If an action is not categorically excluded, an environmental assessment (EA) and/or environmental impact statement (EIS) must be prepared. EA's are prepared in order to determine whether an EIS is required. In addition, EA's can serve to assist * * * planning and decisionmaking. EIS's are prepared on proposed actions which may or will have a significant impact on the quality of the human environment. Following preparation of an EA, responsible * * * officials will examine it to determine the significance of the environmental impacts of the proposed action. If they determine the impacts not to be significant, (the agency) prepares a finding of no significant impact (FONSI). If the impacts are significant, preparation of an EIS is initiated. If it is clear from the outset that an EIS is needed, no EA should be prepared.

The Trust's Summary of the Proposed Rule, presented above, outlines essentially the same process and describes the process set by this final rule. The end result does not differ in any substantive respect from the NPS's description of its process.

In their written comments on the Trust's proposed rule, both NPS and AYS objected to the use of the PADC regulations as the structural template for the Trust's NEPA regulations and suggested that the NEPA procedures and guidelines applicable to the NPS are a more appropriate model for the Trust. NPS commented that the PADC NEPA implementation regulations are an inappropriate model because the mandate of the PADC was more narrowly circumscribed than that of the Trust, particularly in that PADC actions were expressly limited to implementation of a Comprehensive Design Plan, whereas the Trust is required by the Trust Act to observe only the "general objectives" of the 1994 Final General Management Plan Amendment for the Presidio (Plan). AYS similarly comments that the PADC was more narrowly circumscribed in its planning authority than is the Trust. AYS further points out that the area of the Presidio under the Trust's administrative jurisdiction differs from that administered by the PADC in that the Trust area is a national park.

The Trust agrees that its mandate and authorities differ from those of the PADC and are in many ways more similar to those of the NPS. But the relative similarities or differences among the authorities of the Trust and those of the former PADC or the NPS are not a key determinant of the appropriate model for the structure of the Trust's NEPA regulations.

The Trust considered but did not choose to use the NPS procedures as its model for the structure and format of these regulations for a number of reasons, all of which continue to be valid. As noted in the preamble to the proposed regulations, NPS is in the process of developing a Director's Order and "NPS Handbook 12" to replace the existing NPS NEPA procedures, which were adopted in 1982. NPS itself therefore recognizes that the current NPS procedures are in need of revision or clarification. Furthermore, as noted in the preamble to the proposed regulations, the scope and structure of the current 129-page draft NPS procedures are not well-suited to a procedural regulation.

AYS comments that the current (1982) NPS NEPA procedures would be a more appropriate model for the Trust than the draft NPS Handbook. The Trust considered and rejected this option, based on the following reasons:

First, as NPS noted in its comments on an initial draft of the Trust's proposed NEPA regulations, NPS-12 does not carry the force of law. It states: "While these guidelines constitute a permanent directive to NPS personnel, they are strictly advisory and do not create, add to, or otherwise modify any legal requirement. The procedures described in these guidelines were devised solely to aid NPS officials in the internal administration of the bureau, and are subject to reinterpretation, revision or suspension by NPS in its discretion at any time without notice." Contrary to the assumption of the AYS comment, NPS has no NEPA "rules" or regulations. Consistent with the spirit of NEPA and the CEQ regulations, the Trust is committed to issuing its NEPA procedures in the form of regulations that are readily available to the public in the Code of Federal Regulations, that carry the force of law, and that are adopted or amended following notice in the **Federal Register** and opportunity for public comment.

Second, NPS itself believes that the current version of NPS-12 is in need of revision and clarification, as indicated by the NPS Handbook drafting process described above. NPS-12 has been amended several times since it was adopted, and both the Trust and NPS

personnel charged with implementing these NEPA procedures have from time to time found it difficult to determine whether a given version incorporates all of these various amendments and is completely up to date. The Trust wishes, through its regulations, to codify procedures and substance that are more clear, concise, and readily ascertainable.

Third, the format of NPS-12 was developed as a guidance document for internal agency use, and therefore it has a different purpose than a regulation. The Trust's interim procedures for implementing NEPA consist of NPS-12 and the Golden Gate National Recreation Area's Standard Operating Procedure 601. These documents together occupy over 50 pages of guidance materials encompassing explanatory discussion, policy implications, and other narrative information. As a whole, they are an ill-suited structure for codified rules. They may, however, provide an appropriate model to provide internal policy guidance for implementing the Trust's regulations. The Trust is developing such guidance and is evaluating both NPS-12 and Standard Operating Procedure 601 as possible models.

Fourth, NPS-12 is written to be used in tandem with numerous other policies of the DOI and internal guidance of the NPS that are neither applicable nor well-tailored to the Trust's activities because of the varying scope and breadth of DOI's mission. Some relevant examples include Departmental Manual Part 516; NPS-2 on planning process; NPS-3 on public participation; and NPS-28 on cultural resources management. While these topics generally may be pertinent to Trust actions, the details are often ill-adapted. NPS-12 also incorporates guidance based on legal authorities that are inapplicable to the Trust and addresses NPS issues and requirements that are irrelevant to the Trust, such as special laws on in-holdings, mining, and grazing. In short, NPS-12 is written to cover the broadest range of NPS actions and would need to be substantially rewritten in order to customize it to the Trust.

Fifth, NPS-12 is written for a much larger organization than the Trust, and provides for far more layers of review than the Trust's size and structure warrant. For example, NPS-12 specifies the NEPA oversight responsibilities of the Assistant Secretary of the Interior for Policy, Budget and Administration, the Assistant Secretary of the Interior for Fish and Wildlife and Parks, the NPS Director, the Chief of the Office of Park Planning and Environmental Quality,

the Chief of the Division of Environmental Compliance, the Regional Directors, the Regional Environmental Coordinators, the Denver Service Center, the Park Superintendents, and Contracting Officers. The complexity of such review and designations is inappropriate and inapplicable for the Trust's organizational structure and its mission.

AYS argues that the Trust should adopt the NPS NEPA guidelines in order to "facilitate the Trust's ability to work closely with (NPS) on a wide variety of planning and environmental review matters." AYS also comments that this would "make things easier for the many Trust employees who are former NPS employees. * * *" and would allow those who are not former NPS employees to continue to learn the NPS NEPA procedures. AYS further suggests that adoption of the NPS NEPA procedures would be easier for members of the public who are already familiar with these procedures. The Trust recognizes that a certain orientation period will be associated with any introduction of procedures, but believes that this can be accommodated in other ways than adopting guidelines with a structure that is ill-suited to the Trust. In creating the Trust as a Federal entity separate and apart from the NPS, and with a structure and authorities that differ from those of the NPS, Congress contemplated such a change in procedures. The Trust believes the change is warranted by the benefits of the clear, concise structure proposed for the Trust's NEPA regulations. Nevertheless, the Trust is aware of the issues identified by AYS and is committed to (1) continuing to work closely with the NPS and its other neighbors on planning and environmental review matters, as well as discussing arrangements for allocation of lead agency designations between the NPS and the Trust where appropriate; (2) ensuring that its employees are properly trained concerning implementation of NEPA; and (3) providing opportunities for the public to learn about and fully understand the Trust's NEPA procedures.

The Trust chose the PADC regulations as its structural model for a number of other reasons, including the fact that they had been formally promulgated as regulations carrying the force of law in the Code of Federal Regulations and are appropriately concise for a procedural regulation.

In sum, in crafting its procedures, the Trust reviewed and relied heavily upon relevant portions of the NPS NEPA procedures for the substance of the

Trust's NEPA regulations. The Trust's regulations are designed to ensure that the Trust complies with NEPA by analyzing the impacts of all major activities or proposals with the potential to significantly affect the environment. The comments do not address how, if at all, the structure that the Trust adopted from the PADC regulations is deficient in accomplishing that core purpose. As a result, upon consideration of the comments received, the Trust has decided to maintain the structure and format of its proposed regulations in this final rule.

The Trust's Interim Procedures for Implementing NEPA

NPS states that its review of the proposed regulations focuses primarily on the degree of departure from the current NPS guidelines and policies implementing NEPA. AYS appears to object to the Trust moving beyond the interim adoption of NPS's procedures. AYS views the NPS guidelines and policies as "far more appropriate for the Trust's critical responsibilities * * * ." AYS further believes that "(t)he basic problem with the proposed rulemaking is that the Trust has not provided an adequate justification for" this action and "has failed to identify any problem with the existing rules that would explain why they need to be abandoned."

Far from abandoning these procedures, the Trust has adopted their substance but made it specific to the Trust and its mission in order to comply with its obligations under NEPA, the CEQ regulations, and the Trust Act. The Trust adopted the NPS NEPA procedures on an explicitly temporary basis (following consultation with CEQ and the NPS) in order to ensure that the Trust's initial actions would be subjected to appropriate environmental review under NEPA while the Trust hired staff and developed its own procedures for implementing NEPA. The process of drafting, internal review, consultation with other Federal agencies, and notice and comment rulemaking was anticipated to occupy several months, during which time the Trust would be managing the property under its administrative jurisdiction and taking actions that would require NEPA review. The September 14, 1998, **Federal Register** notice of that "interim policy statement" expressly stated the Trust's intention to develop its own procedures and guidelines implementing NEPA (63 FR 49142), as is its responsibility under both NEPA and CEQ regulations implementing NEPA on a government-wide basis. 40 CFR 1507.3.

Furthermore, the Trust temporarily adopted the NPS procedures for a variety of reasons that no longer apply. The Trust initially lacked the staff to implement NEPA and therefore entered into a temporary arrangement with the NPS under which NPS staff provided services to the Trust for NEPA review of the Trust's proposed actions. The NPS personnel, of course, are familiar with the NPS NEPA procedures. A number of actions that the Trust anticipated taking in the initial period of its management of the Presidio had been initiated by the NPS, which formerly managed the property now under the Trust's administrative jurisdiction; these early actions therefore were in the process of being reviewed under the NPS procedures.

Similarly, NPS personnel were familiar with these actions from the period in which NPS managed the property that is now under the Trust's administrative jurisdiction. As a result, following consultation with the NPS and CEQ, the Trust determined that interim adoption of the NPS NEPA procedures was the most convenient and appropriate option for the Trust to ensure that its initial actions were subjected to appropriate NEPA review.

Since the Trust's interim adoption of the NPS NEPA procedures, the Trust has retained the necessary personnel to ensure appropriate NEPA review of proposed actions. Furthermore, the Trust has completed NEPA review of a number of proposed actions using the NPS NEPA procedures and NPS personnel. The interim procedures adopted by the Trust did not establish a status quo against which today's adoption of final NEPA regulations is to be measured. In promulgating today's NEPA procedures the Trust does not depart from any set procedures and guidelines, but rather establishes for the first time the permanent regulations under which it will comply with NEPA.

Section-Specific Comments and Revisions

In addition to these overall comments, both NPS and AYS presented comments on specific aspects of the proposed regulations. These are addressed below according to the section or sections of the proposed regulations that are implicated by the comments. Also discussed below are the revisions made to the proposed regulations by the Trust following consultation with CEQ and further internal review.

Section 1010.1 Policy

NPS comments that this section of the proposed regulations does not adequately identify and incorporate the

Trust's mandate to preserve and conserve the resources of the Presidio, including natural, historic, scenic, cultural, and recreational resources. NPS suggests that this mission be identified in order to emphasize that the focus of NEPA environmental analysis is to provide information to make substantive decisions in accordance with the Trust's mandate. In response, the Trust has revised Section 1010.1(d) to identify these resources specifically.

Section 1010.2 Purpose

AYS comments that this section, unlike the corresponding "background and purpose" section of NPS-12, does not contain a commitment to make information available to the public before actions are taken by the Trust. Although such a policy is not stated in the one-sentence "purpose" section of the Trust's regulations, it is stated in § 1010.12, which concerns public involvement.

NEPA is designed to involve the public in an agency's implementation of NEPA, and the final regulations reflect that statutory purpose. In § 1010.12, the Trust states its policy to make public involvement an essential part of its environmental review process and to provide timely public notice of anticipated Trust actions that may have a significant environmental impact, of environmental documents, and of opportunities for public involvement. The Trust commits to using a variety of means to provide the public with notice, including a monthly newsletter, postings on its web site, placement of public notices in newspapers, and other appropriate means.

The Trust also modified the wording of § 1010.2 to make clear that these regulations are intended to implement the requirements set forth in NEPA and CEQ's regulations.

Section 1010.4 Responsible Trust Official

This section was retitled "NEPA Compliance Coordinator" following further internal review by the Trust. The Trust believes that it is appropriate to identify a more specific and descriptive title associated with this position than the proposed title of "Responsible Trust Official." Corresponding revisions were made throughout the regulations.

This section provides that the Executive Director of the Trust will designate "an employee of the Trust" as the individual responsible for ensuring NEPA compliance. AYS comments that this allows such an official to be designated "by project" and asks why it is necessary for this person "to change from project to project." AYS has

misinterpreted this provision. Section 1010.4 describes duties that involve long-term development and supervision of NEPA compliance procedures and standards, including oversight of all EA's and EIS's prepared during the tenure of the NEPA Compliance Coordinator. This provision does not state nor does the Trust intend that this official will ordinarily change from project to project.

AYS also comments that this section fails to make clear where responsibility for NEPA compliance ultimately rests. Section 1010.4 plainly states that delegation to the NEPA Compliance Coordinator does not abrogate the responsibility of the Trust's Executive Director and Board of Directors to ensure that the Trust complies with NEPA.

Section 1010.5 Major Decision Points

AYS comments that the "scoping" step is not mentioned in this section. The CEQ regulations require that a public scoping process be initiated following an agency decision to prepare an environmental impact statement on a proposed action. 40 CFR 1501.7. Although CEQ regulations also provide that agency procedures implementing NEPA are not to paraphrase or repeat the CEQ regulations, 40 CFR 1507.3(a), the Trust concurs with AYS that clarity would be served by identifying the scoping process in this section. Accordingly, the Trust has cross-referenced the requirements of 40 CFR 1501.7 in § 1010.5(b)(3). In addition, in accordance with the suggestion of the CEQ regulations at 40 CFR 1501.7(b)(3) and the Trust's commitment to public involvement in the NEPA process, the Trust has provided in § 1010.5(b)(2) that the Trust may, in appropriate circumstances, engage in public scoping concerning a proposed action *prior* to its determination as to whether to prepare an EIS. AYS's additional comments concerning scoping and public involvement are addressed below under Section 1010.12.

The Trust has also revised the term "final approval stage" in § 1010.5(a)(2) to refer to the "final decision stage," in order to reflect that the Trust not only approves projects proposed by others but also makes decisions on its own proposals.

Section 1010.7 Actions that Do Not Require an EA or EIS

NPS and AYS comment that § 1010.7(b)(1) contains an overly broad criterion for determining categories of action that normally do not require an EA or an EIS. They comment that this criterion would allow categorical

exclusion of actions with potentially significant environmental effects that cannot be categorically excluded from NEPA analysis, even though the requirement to prepare such analysis may have been satisfied in a prior NEPA document.

The Trust concurs with the comment that the actions described in § 1010.7(b)(1) are, as a matter of nomenclature, not entitled to be categorically excluded from NEPA review. But, as the comments point out, such actions may not require an EA or EIS because by definition the environmental effects of the action have already been adequately analyzed. Upon reflection, the Trust has determined that there is no need to identify in these regulations any general criteria that may be used in the future to determine categories of actions excluded from NEPA review, since any such future categorical exclusions will be subject to notice and opportunity for public comment. Therefore, in the interests of clarity, the Trust has addressed this comment by deleting § 1010.7(b) of the proposed regulations. Similar comments by NPS and AYS concern § 1010.8(c) and 1010.10(c), and the Trust has revised these provisions accordingly. Furthermore, the Trust has made conforming changes to §§ 1010.5(b) (twice adding references to whether the action has “been adequately reviewed in a previously prepared EA or EIS”) and 1010.6(a) (deleting the parenthetical that equated the term “normally does not require an EA or EIS” with the term “categorical exclusion”).

NPS also asks that reference in § 1010.7(b)(1) to Trust actions taken “in accordance with the general objectives of the Plan and the Trust Act” be deleted as superfluous, since the Trust is required to act in accordance with those general objectives under the Trust Act and the Trust’s resolutions. This reference has been removed.

NPS and AYS also comment that it is unlikely that the Trust could “tier” NEPA review of any significant Trust action from the Plan EIS, as that EIS addressed proposed actions in the context of the overall Plan, which the Trust is not required to follow in detail. This comment addresses issues beyond the scope of the Trust’s proposed regulations for implementing NEPA. The Trust acknowledges that certain Trust actions may require further NEPA review. When undertaking such actions, the Trust will address whether it is appropriate to “tier” such subsequent or supplemental NEPA review from analysis contained in the Plan EIS or in another EIS.

In light of the admonition that these regulations not paraphrase or repeat the CEQ regulations, see 40 CFR 1507.3, the Trust has also determined that it is unnecessary to restate the “general rule” in § 1010.7(a) that “neither an EA nor an EIS is required for actions that do not individually or cumulatively have a significant effect on the human environment.” Instead, this provision contains a more straightforward declarative sentence that the Trust has determined that the following categories of action meet the criteria of NEPA for categorical exclusions.

Comments Specific to Categorical Exclusions

NPS and AYS provided specific comments on several of the categorical exclusions in the Trust’s proposed NEPA regulations. These are discussed below. References to categorical exclusions derived from the draft NPS–12 guidelines, the PADC regulations, and the HUD regulations are numbered herein in the same manner as in the proposed regulations, as described at 63 FR 39953, col. 3.

Preliminarily, the Trust notes that, consistent with NEPA, these regulations provide exceptions to categorical exclusions in extraordinary circumstances in which a normally excluded action may have a significant environmental effect. That provision is discussed below under § 1010.7(d).

Section 1010.7(c)(2) Categorical Exclusion for Administrative Actions

NPS and AYS comment that this categorical exclusion should not cover actions to acquire or convert space for Trust offices or maintenance facilities. NPS and AYS note that, because the Trust has a sizable number of employees and considerable maintenance equipment, it is difficult to conclude categorically that all such actions would have no significant effect on the environment. AYS also comments that a categorical exclusion of acquisition or conversion of space for maintenance facilities is inappropriate within a national park and National Historic Landmark District. This provision has been revised to delete the reference to “space acquisition or conversion for the Trust offices or maintenance facilities.” For clarity, the Trust has also added the acquisition of equipment to the non-exclusive list of administrative actions intended to be covered by this categorical exclusion. Following consultation with CEQ, the Trust has also added another requirement to this categorical exclusion: That the action be consistent with applicable Executive

Orders (such as those related to Greening the Government).

Section 1010.7(c)(8) Categorical Exclusion for Educational Activities

AYS comments that this provision combines a variety of NPS exclusions “in inappropriate and/or confusing ways.” The comment does not specify any particular problem or suggest any particular change. The Trust notes that this categorical exclusion is based primarily on NPS–J and deviates only slightly from it to include interpretive programs (which are covered by NPS–B3 and NPS–Q) and technical assistance (which is covered by NPS–M). The Trust therefore has not modified this categorical exclusion.

Section 1010.7(c)(9) Categorical Exclusion for Legislative Proposals

AYS comments that use of the word “minor” to describe the boundary changes and land transactions referred to in this categorical exclusion (which require legislative action) and the proposed categorical exclusion for land acquisitions or exchanges that do not require legislative action (at § 1010.7(c)(16)) is subjective and provides no guidance. AYS considers any such actions in a national park to be significant.

This exclusion, including the word “minor” to describe boundary changes and land transactions, is taken almost verbatim from NPS–H in the draft NPS–12 Handbook. It is also contained in a categorical exclusion in the current NPS–12 for “minor boundary changes.” NPS has not indicated to the Trust in its comments or elsewhere that it finds the word “minor” inappropriate in this context; on the contrary, NPS has previously concluded that this term is appropriate for national parks. Use of the word “minor,” rather than a precise numerical limit, allows the Trust—like NPS—the flexibility to consider the environmental implications of particular actions in context. Furthermore, this exclusion, like all exclusions in the proposed regulations, will not apply to actions that may have a significant effect upon the human environment. The Trust is therefore retaining this categorical exclusion as proposed.

Section 1010.7(c)(10) Categorical Exclusion for Certain Regulations

Following consultation with CEQ, the Trust adopted the suggestion of CEQ that this categorical exclusion be combined with the following categorical exclusion in order to promote clarity concerning the types of regulations and policies that would be categorically

excluded. In addition, the criteria of former provision Section 1010.7(c)(10) were revised to add the term “significant” to three of the four items and to precede their applicability with the term “potentially,” in order to more closely parallel the requirements of NEPA.

Section 1010.7(c)(11) Categorical Exclusion for Certain Policies

This categorical exclusion was combined with the prior categorical exclusion, as discussed above.

Section 1010.7(c)(12) Categorical Exclusion for Certain Research Plans

AYS comments that the scope of this categorical exclusion is unclear in light of the original categorical exclusions that were combined. AYS asks whether this exclusion relates only to non-manipulative and non-destructive research activities. The language of this proposed exclusion states that it covers such activities, as well as non-manipulative and non-destructive monitoring, inventorying, and information gathering. Following further internal review and consultation, the Trust revised the references to “non-manipulative and non-destructive” research to clarify that they include activities that are “only minimally manipulative” and cause “only minimal physical damage.”

AYS also asks whether this exclusion is intended to include “statements for management, outlines of planning requirements and agreements between NPS offices for plans and studies,” which were included in NPS-B5, on which this exclusion is based in part. As noted in the preamble to the proposed rule, the terms “preparation, approval, coordination, and implementation” were added in order to cover the type of items listed in NPS-B5.

AYS finds the lack of conformity between the language in the original exclusions and the language of this exclusion “quite troubling.” The activities covered by this categorical exclusion are no more extensive than those covered by the NPS categorical exclusions on which it is based. Furthermore, the Trust has concluded that these activities, all of which are non-manipulative and non-destructive, meet the criteria for categorical exclusion.

Section 1010.7(c)(14) Categorical Exclusion for Certain Changes in Visitor Use

AYS comments that it is inappropriate for this categorical exclusion, which was developed from NPS exclusions D-1, D-2 and D-3, to

include language covering short-term leases. AYS states that “leasing has nothing to do with changes in visitor use.” Short-term leasing was added to this categorical exclusion because the Trust—unlike NPS—has authority to enter into leases, as well as other agreements for use and occupancy that may not be considered permits in a technical sense. In response to the AYS comment, this categorical exclusion has been modified to remove references to leasing and instead to broaden the term “permit” to include other forms of use and occupancy agreements. This change also clarifies that only short-term leases (or other forms of use and occupancy agreements) related to special visitor events or public assemblies and meetings are covered by this exclusion.

Following further review, the term “environmental disturbance” in this categorical exclusion was changed to “environmental impacts” in order to more closely parallel the requirements of NEPA.

Section 1010.7(c)(15) Categorical Exclusion for the Designation of Environmental Study Areas

Following further review, the criteria of this categorical exclusion that the designation of environmental study areas cause “no environmental impact” was modified to include “only minimal environmental impact” as well—*i.e.*, not “significant environmental impact”—in order to more closely parallel the requirements of NEPA.

Section 1010.7(c)(16) Categorical Exclusion for Land Acquisitions or Exchanges

AYS’s comment concerning this categorical exclusion’s use of the term “minor” is addressed above under the discussion of § 1010.7(c)(9).

NPS suggests that the categorical exclusion be amended to cover transfers of administrative jurisdiction as authorized under section 102 of the Trust Act and to exclude exchanges of land ownership. The Trust has revised this provision in accordance with NPS’s suggestion.

Section 1010.7(c)(18) Categorical Exclusion for Planning and Design Guidelines

AYS and NPS comment that categorically excluding planning and design guidelines from NEPA review is inappropriate. Upon further review of this proposed categorical exclusion, the Trust has removed it from the final rule.

Section 1010.7(c)(19) Categorical Exclusion for Certain Previously Analyzed Actions

NPS and AYS comment that implementation of a plan, even if the plan was covered by a previously prepared EA and/or EIS, may potentially have a significant effect on the human environment and therefore cannot be categorically excluded from NEPA review. The ambiguity noted by NPS and AYS is unintentional. The Trust therefore has revised this categorical exclusion as suggested by the NPS comment, which combines NPS-A1 (relating to approved actions) with NPS-B1 (relating to approved plans). In addition, the Trust has revised the term “no potential for environmental impact” to state that the criterion is whether the action “would cause no or only minimal environmental impact,” in order to more closely parallel the requirements of NEPA.

Section 1010.7(c)(20) Categorical Exclusion for Contracts Related to Administrative Operations

Consistent with other comments discussed above, NPS comments that this categorical exclusion should not necessarily cover actions which have been the subject of prior NEPA review. This categorical exclusion has been revised to address the NPS comment and to be consistent with the addition to § 1010.10(c), which categorizes as appropriate for preparation of an EA actions involving “contracts, work authorizations, and master agreements related to and implementing programs, policies, and proposals which are not categorically excluded and for which there is no previously prepared EA or EIS.”

Section 1010.7(c)(21) Categorical Exclusion for Transfer of Non-Fee Interests

NPS and AYS comment that this categorical exclusion is too broadly worded. NPS suggests that it either be deleted or limited to actions that do not require physical change to structures and do not have adverse effects on the environment. The Trust believes that it is appropriate to retain this categorical exclusion, while limiting it to actions that will have no or only minimal environmental impact (*e.g.*, the permitting of existing occupancies that have not been properly documented, the revision of lease provisions concerning financial or legal matters, etc.). The addition of this criterion, since it properly limits this categorical exclusion, is a key determinant of

whether an action can properly be considered categorically excluded. See 40 CFR 1508.8. (Section 1010.7(c)(15) has been revised in a similar manner to refer to actions causing “no or only minimal environmental impact.”)

Section 1010.7(c)(22) Categorical Exclusion for Certain Changes to Real Property Agreements

AYS comments that this exclusion “lumps” together and alters the several NPS exclusions from which it is drawn. Other than “the elimination of qualifying language (*i.e.*, ‘minor’ before ‘modifications’),” the comment does not specify other faults. The Trust has revised this categorical exclusion to include the word “minor” before “modifications,” and to remove the words “renegotiation” and “termination,” all of which were not included in the categorical exclusions of the current NPS-12 that correspond to those in the draft NPS-12 from which this categorical exclusion was drawn.

AYS also comments that this exclusion is confusing in that it includes “language relating to when supplementation of EIS’s is necessary.” The language AYS points to provides that this exclusion does not apply to renewal of or changes to agreements for which supplemental NEPA review is required. The Trust has modified the grammar of this language in order to clarify its meaning, which is merely intended to ensure that any new information or changes in environmental conditions be taken into account before the Trust relies on this categorical exclusion.

Furthermore, following internal review, the Trust has revised this categorical exclusion to remove the qualification that these agreements must have been in force as of the date the Trust received administrative jurisdiction of the underlying real property. This qualification was viewed as unnecessarily restrictive, likely to become obsolete rather quickly, and potentially causing ambiguity in that the effective date of each and every purported agreement for use of real property in Area B of the Presidio is not clear.

Section 1010.7(c)(23) Categorical Exclusion for Permits for Minor Development Activities

NPS comments that the proposed categorical exclusion for minor development activities, which is based upon a PADC exclusion of “review” of applications for permits for minor development activities, should not extend to “issuance” of such permits. Upon further review, and in light of the

comments, the Trust has deleted this categorical exclusion from its final regulations.

Section 1010.7(c)(24) Categorical Exclusion for Rehabilitation of Historic Properties

NPS and AYS also comment that minor development activities and minor actions affecting historic properties should not be categorically excluded from NEPA on the grounds of compliance with the Secretary of Interior’s “Standards for Treatment of Historic Properties” (36 CFR part 68) when, under NPS practice, determination of compliance with those standards occurs in the context of NEPA review.

While NEPA review provides an opportunity to determine compliance with the Secretary’s standards, it is not a necessary or exclusive means to make such a determination. Therefore, under the regulations, minor projects that are properly excluded from NEPA review need not be subject to NEPA review solely to facilitate determination of compliance with the Secretary’s historic properties standards. In order to ensure that only appropriate projects are covered by this categorical exclusion, the Trust has added to it a requirement that the proposed project have no or only minimal environmental impact. See 40 CFR 1508.8.

NPS also comments that the Trust must consider the environmental impact of this categorical exclusion on the status of the Presidio as a National Historic Landmark. Because this categorical exclusion only applies to actions that are in conformance with the Secretary’s historic properties standards, there is no impact to the Presidio’s status as a National Historic Landmark that requires evaluation in an EA.

Section 1010.7(c)(25) Categorical Exclusion for Rehabilitation of Non-Historic Properties

NPS and AYS comment that use of a categorical exclusion developed for HUD is misplaced, because the Trust, unlike HUD, is not charged with a mandate to develop housing. NPS and AYS also comment that increase of not more than 20% in unit density of housing facilities under the Trust’s administrative jurisdiction could have significant environmental impacts that would require evaluation under NEPA. NPS further comments that this categorical exclusion would allow “any non-historic building to be modified in any way” without NEPA review, as long as the modification did not involve a

change from residential to non-residential use or vice versa.

The Trust has substantially revised this categorical exclusion to remove the objectionable criteria that were part of the HUD categorical exclusion. Instead, the Trust has established two criteria called for under NEPA and applicable law: (1) That the action be consistent with applicable Executive Orders; and (2) that the action not have significant environmental impacts, including impacts to cultural landscapes or archaeological resources. Similar changes were made to the categorical exclusion proposed in § 1010.7(c)(27) related to removal of non-historic materials and structures.

Section 1010.7(c)(28) Categorical Exclusion for Activities Related to Minor Structures

NPS and AYS comment that this categorical exclusion, which combines parts of ten categorical exclusions developed by NPS, results in a single exclusion much broader in effect than the sum of the ten NPS exclusions. NPS and AYS comment that so broad an exclusion would discourage comprehensive planning and appropriate environmental review involving the public. NPS also comments that this categorical exclusion, which deleted the reference in some NPS exclusions to “areas showing clear evidence of recent human disturbance,” does not adequately recognize the importance of considering and protecting archaeological resources at the Presidio. In response to the comments, the Trust has replaced this categorical exclusion with ten categorical exclusions closely corresponding to the NPS models (NPS-C5, NPS-C8, NPS-C9, NPS-C10, NPS-C11, NPS-C12, NPS-C17, NPS-C18, NPS-C19, and NPS-D4). Modifications have been made where the NPS exclusions referred to features uncharacteristic of or inappropriate to the Presidio, such as pit toilets and logging roads.

Section 1010.7(c)(30) Categorical Exclusion for Utility Rights-of-Way

NPS and AYS comment that this exclusion, which combines parts of four NPS categorical exclusions, is overly broad and may discourage appropriate NEPA review to determine whether there would be visual intrusion or compliance with the Secretary of Interior’s Standards for the Treatment of Historic Properties. In response to the comments, this categorical exclusion has been replaced by four exclusions more closely corresponding to the NPS models (NPS-C13, NPS-C14, NPS-C15,

NPS-C16). To address the visual impacts concern, modifications have been made to tailor the exclusions to the Presidio, including reference to the Secretary's Standards, in light of the Presidio's status as a National Historic Landmark. In addition, the Trust notes that the categorical exclusion for "upgrading or adding new overhead utility facilities to existing poles" also covers maintenance and repair of such facilities.

Section 1010.7(d) Extraordinary Circumstances

The CEQ regulations require that agency procedures to implement NEPA "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." 40 CFR 1508.4. NPS and AYS comment that NPS-12 lists several specific exceptions to the categorical exclusions provided in that document and suggest that the Trust adopt all of these exceptions.

The CEQ regulations do not require the enumeration of specific circumstances in which an environmental document must be prepared despite the applicability of a categorical exclusion, and CEQ did not raise this issue in its review of an earlier draft of the Trust's proposed NEPA regulations. Although NPS-12 lists certain exceptions, the Trust does not believe that a complete enumeration is possible or appropriate in a document that—unlike NPS-12—is intended to be legally enforceable. The Trust nevertheless believes that clarity will result from enumeration of criteria that will be applied by the NEPA Compliance Coordinator in determining whether such "extraordinary circumstances" exist. The Trust has therefore identified several such criteria, based on the NPS list of ten exceptions, in § 1010.7(b) of these final regulations.

The Trust has modified certain of the NPS criteria, however, in order to account for the characteristics of the geographic area under the Trust's administrative jurisdiction, which does not encompass any wilderness areas, wild or scenic rivers, prime farmlands, or areas on the Department of the Interior's National Register of Natural Landmarks. The Trust has also added Executive Order 13007 (Indian Sacred Sites) to the list of executive orders in the ninth criterion. This executive order is specifically identified in the overriding criteria of the draft NPS-12.

In addition, the Trust has retitled this section using the term "extraordinary circumstances"—which appears in the CEQ regulations—as opposed to "overriding criteria."

Section 1010.8 Actions That Normally Require an EIS

NPS and AYS comment that § 1010.8(c), listing categories of actions normally requiring an EIS, should not include an exception for actions that are categorically excluded. As discussed above concerning § 1010.7, the Trust agrees with this comment and has revised the regulation accordingly. For the sake of clarity, the listing of legislative proposals in § 1010.8(c)(1) is specifically limited to those not covered by the categorical exclusion of § 1010.7(a)(9) of these final regulations. The Trust has also made a conforming change to § 1010.10(c). AYS further proposes that § 1010.8 include a statement that "even categorically excluded actions require NEPA analysis when there is the potential for adverse impacts." The Trust has considered this suggestion and believes it is unnecessary because this issue is already addressed with clarity in § 1010.7(b) of these final regulations.

NPS and AYS also comment that § 1010.8(c)(2), which provides that an EIS is normally required for actions associated with construction of new buildings and having a significant environmental effect, should not be limited to activities that were not contemplated in the Plan. NPS and AYS comment that whether an action having a significant environmental effect is contemplated in the Plan is irrelevant to whether the environmental effects of that action have been adequately analyzed. The regulation has been revised in light of these comments to remove the reference to an activity having been "contemplated by the Plan." Removing these references to the Plan and the Plan EIS obviates the need for definitions of these terms, which have therefore been removed from § 1010.3.

NPS and AYS comment that § 1010.8(c)(3), which provides that an EIS is normally required for actions significantly altering the kind and amount of resources at the Presidio, does not specify that those resources include "natural" or "scenic" resources. The regulation has been revised to address these comments.

NPS also comments that the list of actions normally requiring preparation of an EIS should also include "a General Management Plan, or its equivalent." The Trust agrees that the approval of a plan akin to what the NPS calls a "General Management Plan" would ordinarily require the preparation of an EIS. Because the Trust may not adhere to this nomenclature, however, the Trust has revised the regulation to refer

to "[a]pproval or amendment of a general land use or resource management plan for the entire Presidio Trust Area."

Section 1010.10 Actions That Normally Require an EA

Section 1010.10(b) identifies the criteria used to determine categories of action normally requiring an EA, but not necessarily an EIS. Further internal review and consultation with CEQ resulted in the revision of these provisions to (1) remove the qualifier "minor" before "degradation;" (2) add the qualifier "adverse" before "impact" in the second and third items, since that is the primary concern of NEPA; and (3) for the sake of clarity, add a list of the type of resources that the Trust considers to be "protected resources."

Section 1010.10(c) lists actions that normally require preparation of an EA. NPS comments that this list should not include "proposals to significantly add or alter access between the Presidio Trust Area and surrounding neighborhoods." NPS believes that actions "significantly" adding or altering access may have significant environmental effects that require preparation of an EIS, whereas some access alteration may only require an EA. Section 1010.10(c) has been revised to address this comment.

NPS also suggests that the list of actions normally requiring an EA include two items listed in the PADC regulations (at 36 CFR 907.11(b)(1), (5)). The first NPS suggestion covers amendments to a General Management Plan that do not represent "substantial changes" to such document. The Trust has not included this item for the reasons stated above in the discussion of § 1010.8. Instead, under the revision to § 1010.8(c)(4), the amendment of a general land use or resource management plan is intended to fall into the category of actions that normally would require preparation of an EIS. The second NPS suggestions covers contracts, work authorizations, and master agreements related to and implementing programs, policies and proposals. The regulations at § 1010.10(c)(5) have been revised to address this NPS comment.

As noted above, the Trust has deleted the parenthetical in § 1010.10(c) that would except from actions normally requiring an EA those that are categorically excluded or previously analyzed in an EA or EIS, since that exception is already stated clearly in § 1010.7.

Section 1010.11 Preparation of an EA

Following consultation with CEQ and further internal review, the Trust clarified § 1010.11(b) to note that an EA should include an analysis of cumulative impacts. The other revision to this section is discussed below.

Section 1010.12 Public Involvement

AYS comments that the proposed regulations provide no opportunity for public review of Trust actions that are covered by categorical exclusions. In response, the Trust notes that NEPA implementing procedures are intended simply to ensure that the Trust complies with NEPA. Information concerning determinations that specific actions or proposals are categorically excluded will be available in the Trust's library and from the Trust upon request. Furthermore, the Trust has in place, pursuant to Board Resolutions 97-3 and 98-16, a comprehensive Public Outreach Policy for sharing information with the public and seeking public comment. Since the first meeting of the Trust's Board of Directors in July 1997, the Board has held regular public meetings; staff have coordinated innumerable public input sessions on diverse topics; the Trust has routinely published a monthly newsletter and multiple fliers on issues of special interest; and Trust staff have initiated and participated in regular discussions with a variety of neighborhood, community, environmental, and business organizations. Under its Public Outreach Policy, the Trust maintains both an informative website and an extensive public library of relevant documents, including NEPA and other environmental documentation, concerning the Presidio. These opportunities supplement the public involvement requirements of the CEQ regulations at 40 CFR 1506.6 as well as the additional requirements of § 1010.12 of the Trust's NEPA regulations.

AYS comments that under the proposed rules the Trust is not required to designate a "preferred alternative" in the environmental documents it prepares and that such a requirement would facilitate public involvement and improve the usefulness to the Trust of information provided by commenters. The Trust notes that the CEQ regulations, to which the Trust is subject, require just such an identification in draft and final EIS's. 40 CFR 1502.14(e). Because the CEQ regulations mandate that an individual agency's regulations avoid restating the CEQ requirements, see 40 CFR 1507.3(a), the Trust has not reiterated this requirement in these regulations.

AYS comments that § 1010.12 fails to specify the precise means by which public notice will be provided. AYS further comments that the process followed by the Trust for notification of these proposed regulations indicates that greater specificity is needed in the text of the regulations, in order to ensure appropriate public notice in the future. The Trust regrets any confusion with respect to public notice that may have occurred at the time the proposed regulations were published. The Trust met its responsibility to provide notice and opportunity for public comment on the Trust's proposed NEPA regulations, including extending the comment period upon request in order to allow AYS to provide written comments. More substantively, the proposed regulations specify several means of public notification: "Public notice of anticipated Trust actions that may have a significant environmental effect, opportunities for involvement, and availability of environmental documents will be provided through announcements in the Trust's monthly newsletter, postings on its web site (<http://www.presidiotrust.gov>), placement of public notices in newspapers, direct mailings, and other means appropriate for involving the public in a meaningful way." These means are in addition to the requirements of the CEQ regulations at 40 CFR 1506.6, which are more specific with regard to EA's and EIS's, as well as public hearings or meetings in the event of substantial environmental controversy, substantial interest, or a request by another agency with jurisdiction over the action.

Furthermore, the proposed regulations (at § 1010.12) contain a commitment to holding public scoping meetings and public workshops on projects subject to NEPA review. As noted above, the Trust has revised § 1010.5 to allow for public scoping meetings prior to the determination as to whether an EIS is required. The Trust has also revised § 1010.11(a) to require public notice once the Trust has determined to prepare an EA. AYS also requests that opportunities be provided for submittal of written scoping comments in order to allow opportunities for formal comment and for comment by interested parties who may not be able to attend a workshop. The Trust has revised § 1010.12 to clarify that the Trust will solicit and accept written scoping comments as part of the scoping process.

AYS also comments that the procedures of some agencies provide for EA's and EIS's to respond to written scoping comments. Such documents

prepared by the Trust will reflect agencies' and the public's priority concerns as expressed through scoping. Nevertheless, there is no requirement for an individual response to written scoping comments under NEPA or the CEQ regulations. The Trust's NEPA regulations continue to allow the Trust the flexibility to tailor its responses to scoping comments to the particular circumstances of each action under review.

Section 1010.13 Trust Decision-Making Procedures

Following internal review and consultation with CEQ, the Trust revised § 1010.13(b) to provide for monitoring and enforcement of any mitigation measures adopted in an EIS.

Section 1010.15 Actions Where Lead Agency Designation is Necessary

The NPS comments that this section should not provide that the Trust will seek designation as lead agency for all actions "that directly relate to implementation of the general objectives of the Plan," because some such actions may relate to Area A of the Presidio, over which NPS—and not the Trust—has administrative jurisdiction. Because circumstances in which the Trust would seek lead agency status are likely to be covered by the criteria of 40 CFR 1501.5 and the other criteria identified in § 1010.15, the Trust has revised this section in accordance with this NPS comment.

Following internal review and consultation with CEQ, the Trust also modified § 1010.15(b) and (c) to allow for the Trust to establish itself as "joint lead agency" for appropriate actions.

Section 1010.17 Actions to Eliminate Duplication With State and Local Procedures

Upon further review of § 1010.17(d), the Trust has clarified it to include not only "joint environmental assessments" but also joint Environmental Impact Statements/Environmental Impact Reports. The California Environmental Quality Act requires the preparation of Environmental Impact Reports (EIRs) for certain actions, and the preparation of a combined EIS/EIR for appropriate actions would serve to reduce duplication with State and local procedures.

Regulatory Impact

This final rule 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 final 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 final rule. Because this final rule is not "economically significant," it is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this final rule is not a "major rule" under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. sec. 801 *et seq.*

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final 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 final 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

Although not required to do so, the Trust prepared an Environmental Assessment (EA) in connection with the proposed rule. The EA determined that the proposed rule would not have a significant effect on the quality of the human environment because it was neither intended nor expected to change the physical status quo of the Presidio in any significant manner. Comments on that EA were received from both AYS and NPS. The Trust has prepared a response to these comments, which is part of the administrative record on this matter.

The EA, the FONSI, and the administrative record 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Other Applicable Authorities

The Presidio Trust has drafted and reviewed this final rule in light of Executive Order 12988 and has determined that it meets the applicable standards provided in secs. 3(a) and (b) of that order.

List of Subjects in 36 CFR Part 1010

Administrative practice and procedure, Environmental impact statements, National parks, Public lands, Recreation and recreation areas.

Dated: September 9, 2000.

Karen A. Cook,
General Counsel.

Accordingly, the Presidio Trust adds 36 CFR part 1010, as set forth below:

PART 1010—ENVIRONMENTAL QUALITY

Sec.

- 1010.1 Policy.
- 1010.2 Purpose.
- 1010.3 Definitions.
- 1010.4 NEPA Compliance Coordinator.
- 1010.5 Major decision points.
- 1010.6 Determination of requirement for EA or EIS.
- 1010.7 Actions that do not require an EA or EIS.
- 1010.8 Actions that normally require an EIS.
- 1010.9 Preparation of an EIS.
- 1010.10 Actions that normally require an EA.
- 1010.11 Preparation of an EA.
- 1010.12 Public involvement.
- 1010.13 Trust decision-making procedures.
- 1010.14 Review of proposals by project applicants.
- 1010.15 Actions where lead agency designation is necessary.
- 1010.16 Actions to encourage agency cooperation early in the NEPA process.
- 1010.17 Actions to eliminate duplication with State and local procedures.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. sec. 460bb note); 42 U.S.C. sec. 4321 *et seq.*; 40 CFR 1507.3.

§ 1010.1 Policy.

The Presidio Trust's policy is to:

(a) Use all practical means, consistent with the Trust's statutory authority, available resources, and national policy, to protect and enhance the quality of the human environment;

(b) Ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Trust;

(c) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decision-making which may have an impact on the human environment;

(d) Develop and utilize ecological, cultural, and other environmental information in the management of the Presidio Trust

Area and its natural, historic, scenic, cultural, and recreational resources pursuant to the Trust Act;

(e) Invite the cooperation and encourage the participation, where appropriate, of Federal, State, and local authorities and the public in Trust planning and decision-making processes that affect the quality of the human environment; and

(f) Minimize any possible adverse effects of Trust decisions and actions upon the quality of the human environment.

§ 1010.2 Purpose.

The regulations in this part incorporate and supplement the Council on Environmental Quality's (CEQ) regulations at 40 CFR parts 1500 through 1508 for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA), and otherwise to describe how the Trust intends to consider environmental factors and concerns in the Trust's decision-making process within the requirements set forth in NEPA and CEQ regulations.

§ 1010.3 Definitions.

(a) The following terms have the following meanings as used in this part:
Decision-maker means the Board or its designee.

EA means an environmental assessment, as defined at 40 CFR 1508.9.

EIS means an environmental impact statement, as defined at 40 CFR 1508.11.

Project applicant means an individual, firm, partnership, corporation, joint venture, or other public or private entity other than the Trust (including a combination of more than one such entities) which seeks to demolish, construct, reconstruct, develop, preserve, rehabilitate, or restore real property within the Presidio Trust Area.

(b) If not defined in this part or in this chapter, other terms used in this part have the same meanings as those provided in 40 CFR part 1508.

§ 1010.4 NEPA Compliance Coordinator.

(a) The NEPA Compliance Coordinator, as designated by the Executive Director, shall be the Trust official responsible for implementation and operation of the Trust's policies and procedures on environmental quality and control. The delegation of this responsibility shall not abrogate the responsibility of the Executive Director and the Board to ensure that NEPA and other applicable laws are followed, or the right of the Executive Director and the Board to overrule or alter decisions of the NEPA Compliance Coordinator in accordance with the Trust's regulations and procedures.

(b) The NEPA Compliance Coordinator shall:

(1) Coordinate the formulation and revision of Trust policies and procedures on matters pertaining to environmental protection and enhancement;

(2) Establish and maintain working relationships with relevant government agencies concerned with environmental matters;

(3) Develop procedures within the Trust's planning and decision-making processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part;

(4) Develop, monitor, and review the Trust's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(5) Monitor processes to ensure that the Trust's procedures regarding consideration of environmental quality are achieving their intended purposes;

(6) Advise the Board, officers, and employees of the Trust of technical and management requirements of environmental analysis, of appropriate expertise available, and, in consultation with the Trust's General Counsel, of relevant legal developments;

(7) Monitor the consideration and documentation of the environmental aspects of the Trust's planning and decision-making processes by appropriate officers and employees of the Trust;

(8) Ensure that all EA's and EIS's are prepared in accordance with the appropriate regulations adopted by the CEQ and the Trust;

(9) Consolidate and transmit to appropriate parties the Trust's comments on EIS's and other environmental reports prepared by other agencies;

(10) Acquire information and prepare appropriate reports on environmental matters required of the Trust;

(11) Coordinate Trust efforts to make available to other parties information and advice on the Trust's policies for protecting and enhancing the quality of the environment; and

(12) Designate other Trust employees to execute these duties under the supervision of the NEPA Compliance Coordinator, where necessary for administrative convenience and efficiency. As used in this chapter, the term "NEPA Compliance Coordinator" includes any such designee.

§ 1010.5 Major decision points.

(a) The possible environmental effects of a proposed action or project within the Presidio Trust Area must be considered along with technical, financial, and other factors throughout the decision-making process. Most Trust projects have three distinct stages in the decision-making process:

(1) Conceptual or preliminary study stage;

(2) Detailed planning or final decision stage;

(3) Implementation stage.

(b) Environmental review will be integrated into the decision-making process of the Trust as follows:

(1) During the conceptual or preliminary study stage, the NEPA Compliance Coordinator shall determine whether the proposed action or project is one which is categorically excluded under § 1010.7, has been adequately reviewed in a previously prepared EA and/or EIS, or requires further NEPA review (*i.e.*, an EA or an EIS).

(2) If the proposed action or project is not categorically excluded and has not been adequately reviewed in a previously prepared EA and/or EIS, then prior to the Trust's proceeding beyond the conceptual or preliminary study stage, the NEPA Compliance Coordinator must determine whether an EIS is required. When appropriate, prior to the determination as to whether an EIS is required, the NEPA Compliance Coordinator may initiate a public scoping process in order to inform such a determination.

(3) If an EIS is determined to be necessary, the Trust shall initiate a public scoping process in accordance with 40 CFR 1501.7. An EIS, if determined necessary, must be completed and circulated at the earliest point at which meaningful analysis can be developed for the proposed action or project and prior to the Trust's final approval of the proposed action or project.

§ 1010.6 Determination of requirement for EA or EIS.

In deciding whether to require the preparation of an EA or an EIS, the NEPA Compliance Coordinator will determine whether the proposal is one that:

(a) Normally does not require either an EA or an EIS;

(b) Normally requires an EIS; or

(c) Normally requires an EA, but not necessarily an EIS.

§ 1010.7 Actions that do not require an EA or EIS.

(a) *Categorical Exclusions.* Pursuant to 40 CFR 1508.4, the Trust has determined that the categories of action identified in this paragraph have no significant effect, either individually or cumulatively, on the human environment and are therefore categorically excluded. Such actions (whether approved by the Trust or undertaken by the Trust directly or

indirectly) do not require the preparation of an EA or an EIS:

(1) Personnel actions and investigations and personal services contracts;

(2) Administrative actions and operations directly related to the operation of the Trust (*e.g.*, purchase of furnishings, services, and equipment) provided such actions and operations are consistent with applicable Executive Orders;

(3) Internal organizational changes and facility and office expansions, reductions, and closings;

(4) Routine financial transactions, including such things as salaries and expenses, procurement, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties;

(5) Management, formulation, allocation, transfer and reprogramming of the Trust's budget;

(6) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement activities having limited context and intensity (limited size and magnitude or short-term effects);

(7) Preparation, issuance, and submittal of publications and routine reports;

(8) Activities which are educational, informational, or advisory (including interpretive programs), or otherwise in consultation with or providing technical assistance to other agencies, public and private entities, visitors, individuals, or the general public;

(9) Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations or financing authority, minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects, as well as comments and reports on legislative proposals;

(10) Proposal, adoption, revision, and termination of policies, directives, regulations, and guidelines:

(i) That are of an administrative, financial, legal, technical, or procedural nature, the environmental effects of which are too broad, speculative, or conjectural to lend themselves to environmental analysis and the implementation of which will be subject to the NEPA process either collectively or on a case-by-case basis; or

(ii) Where such actions will not potentially:

(A) Increase public use to the extent of compromising the nature and character of the area or of causing significant physical damage to it;

(B) Introduce non-compatible uses that might compromise the nature and characteristics of the area or cause significant physical damage to it;

(C) Conflict with adjacent ownerships or land uses; or

(D) Cause a significant nuisance to adjacent owners or occupants;

(11) Preparation, approval, coordination, and implementation of plans, including priorities, justifications, and strategies, for research, monitoring, inventorying, and information gathering that is not or is only minimally manipulative and causes no or only minimal physical damage;

(12) Identification, nomination, certification, and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs;

(13) Minor or temporary changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection, minor changes in programs or regulations pertaining to visitor activities, and approval of permits or other use and occupancy agreements for special events or public assemblies and meetings, provided such events, assemblies, and meetings entail only short-term or readily mitigated environmental impacts;

(14) Designation of environmental study areas and research areas, including those closed temporarily or permanently to the public, provided such designation would cause no or only minimal environmental impact;

(15) Land and boundary surveys and minor boundary adjustments or transfers of administrative jurisdiction resulting in no significant change in land use;

(16) Archaeological surveys and permits involving only surface collection or small-scale test excavations;

(17) Changes or amendments to an approved plan or action when such changes or amendments would cause no or only minimal environmental impact;

(18) Contracts, work authorizations, or procurement actions related to proposals, programs, and master agreements related to administrative operation of the Trust;

(19) The leasing, permitting, sale, or financing of, or granting of non-fee interests regarding, real or personal property in the Presidio Trust Area, provided that such actions would have no or only minimal environmental impact;

(20) Extension, reissuance, renewal, minor modification, or conversion in form of agreements for use of real

property (including but not limited to leases, permits, licenses, concession contracts, use and occupancy agreements, easements, and rights-of-way), so long as such agreements were previously subject to NEPA and do not involve new construction or new or substantially greater environmental impacts, and so long as no new information is known or no changed circumstances have occurred that would give rise to new or substantially greater environmental impacts.

(21) Rehabilitation, modification, or improvement of historic properties that have been determined to be in conformance with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR part 68 and that would have no or only minimal environmental impact;

(22) Rehabilitation, maintenance, modification or improvement of non-historic properties that is consistent with applicable Executive Orders, provided there is no potential for significant environmental impacts, including impacts to cultural landscapes or archaeological resources;

(23) Removal, reduction, or restraint of resident individuals of species that are not threatened or endangered which pose dangers to visitors, residents, or neighbors or immediate threats to resources of the Presidio Trust Area;

(24) Removal of non-historic materials and structures in order to restore natural conditions when such removal has no potential for significant environmental impacts, including impacts to cultural landscapes or archaeological resources and is consistent with applicable Executive Orders;

(25) Installation of signs, displays, and kiosks, etc.;

(26) Replacement of minor structures and facilities (e.g., signs, kiosks, fences, comfort stations, and parking lots) with little or no change in location, capacity, or appearance;

(27) Repair, resurfacing, striping, installation of traffic control devices, and repair/replacement of guardrails, culverts, signs, and other minor features, on existing roads and parking facilities, provided there is no potential for significant environmental impact;

(28) Minor trail relocation, development of compatible trail networks on roads or other formally established routes, and trail maintenance and repair;

(29) Construction or rehabilitation in previously disturbed or developed areas required to meet health or safety regulations, or to meet requirements for making facilities accessible to the handicapped provided such construction or rehabilitation is

implemented in a manner consistent with applicable Executive Orders;

(30) Landscaping and landscape maintenance in previously disturbed or developed areas;

(31) Minor changes in programs and regulations pertaining to visitor activities;

(32) Routine maintenance, property management, and resource management, with no potential for significant environmental impact and that are consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR part 68, as applicable, and with applicable Executive Orders;

(33) Upgrading or adding new utility facilities to existing poles, or replacement poles which do not change existing pole line configurations.

(34) Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion or non-conformance with the Secretary's "Standards for the Treatment of Historic Properties" at 36 CFR part 68, as applicable, and will involve no clearance of vegetation other than for placement of poles;

(35) Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an area administered by NPS or the Trust or non-conformance with the Secretary's "Standards for the Treatment of Historic Properties" at 36 CFR part 68, as applicable;

(36) Installation of underground utilities in previously disturbed areas having stable soils, or in an existing utility right-of-way; and

(37) Experimental testing of no longer than 180 days of mass transit systems, and changes in operation of existing systems with no potential for significant environmental impact.

(b) *Extraordinary circumstances.* An action that falls into one or more of the categories in paragraph (a) of this section may still require the preparation of an EIS or an EA if the NEPA Compliance Coordinator determines that it meets the criteria stated in § 1010.8(b) or § 1010.10(b), respectively, or involves extraordinary circumstances that may have a significant environmental effect. At its discretion, the Trust may require the preparation of an EA or an EIS for a proposal or action that otherwise qualifies for a categorical exclusion. Criteria used in determining whether to prepare an EA or EIS for an action that otherwise qualifies for a

categorical exclusion include whether an action may:

(1) Have significant adverse effects on public health or safety;

(2) Have significant adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, sole or principal drinking water aquifers, wetlands, floodplains, or ecologically significant or critical areas;

(3) Have highly controversial environmental effects;

(4) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks;

(5) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;

(6) Be directly related to other actions with individually insignificant but cumulatively significant environmental effects;

(7) Have significant adverse effects on properties listed or eligible for listing on the National Register of Historic Places;

(8) Have significant adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species;

(9) Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), Executive Order 13007 (Indian Sacred Sites), or the Fish and Wildlife Coordination Act; and/or

(10) Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

§ 1010.8 Actions that normally require an EIS.

(a) *General procedure.* So long as a proposed action or project is not categorically excluded under § 1010.7, the Trust shall require the preparation of an EA to determine if the proposed action or project requires an EIS. Nevertheless, if it is readily apparent to the NEPA Compliance Coordinator that the proposed action or project will have a significant impact on the environment, an EA is not required, and the Trust will prepare or direct the preparation of an EIS without preparing or completing the preparation of an EA. To assist the NEPA Compliance Coordinator in determining if a proposal or action normally requires the preparation of an EIS, the following criteria and categories of action are provided.

(b) *Criteria.* Criteria used to determine whether proposals or actions may

significantly affect the environment and therefore require an EIS are described in 40 CFR 1508.27.

(c) *Categories of action.* The following categories of action normally require an EIS:

(1) Legislative proposals made by the Trust to the United States Congress, other than those described in § 1010.7(b)(9);

(2) Approval, funding, construction, and/or demolition in preparation for construction of any new building, if that activity has a significant effect on the human environment;

(3) Proposals that would significantly alter the kind and amount of natural, recreational, historical, scenic, or cultural resources of the Presidio Trust Area or the integrity of the setting; and

(4) Approval or amendment of a general land use or resource management plan for the entire Presidio Trust Area.

§ 1010.9 Preparation of an EIS.

(a) *Notice of intent.* When the Trust decides to prepare an EIS, it shall publish a notice of intent in the **Federal Register** in accordance with 40 CFR 1501.7 and 1508.22. Where there is a lengthy period between the Trust's decision to prepare an EIS and the time of actual preparation, then at the discretion of the NEPA Compliance Coordinator the notice of intent shall be published at a reasonable time in advance of preparation of the EIS.

(b) *Preparation.* After having determined that an EIS will be prepared and having published the notice of intent, the Trust will begin to prepare or to direct the preparation of the EIS. The EIS shall be formatted in accordance with 40 CFR 1502.10.

(c) *Supplemental environmental impact statements.* The Trust may supplement a draft or final EIS at any time. The Trust shall prepare a supplement to either a draft or final EIS when:

(1) Substantial changes are proposed to an action analyzed in the draft or final EIS that are relevant to environmental concerns;

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(3) Actions are proposed which relate to or are similar to other actions taken or proposed and that together will have a cumulatively significant impact on the human environment.

§ 1010.10 Actions that normally require an EA.

(a) *General procedure.* If a proposal or action is not one that normally requires

an EIS, and does not qualify for a categorical exclusion under § 1010.7, the Trust will require, prepare, or direct the preparation of an EA. An EA should be prepared when the Trust has insufficient information on which to determine whether a proposal may have significant impacts. An EA assists the Trust in complying with NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary.

(b) *Criteria.* Criteria used to determine those categories of action that normally require an EA, but not necessarily an EIS, include:

(1) Potential for degradation of environmental quality;

(2) Potential for cumulative adverse impact on environmental quality; and

(3) Potential for adverse impact on protected resources (e.g., natural, scenic, recreational, historical, and cultural resources).

(c) *Categories of action.* The following categories of action normally require the preparation of an EA:

(1) Promulgation of regulations and requirements that are not categorically excluded;

(2) Proposals submitted by project applicants to the Trust for its review, as described in § 1010.14;

(3) Proposals to add or alter access between the Presidio Trust Area and surrounding neighborhoods; and

(4) Contracts, work authorizations, and master agreements related to and implementing programs, policies, and proposals which are not categorically excluded and for which there is no previously prepared EA and/or EIS.

§ 1010.11 Preparation of an EA.

(a) *When to prepare.* The Trust will begin the preparation of an EA (or require it to be begun) as early as possible after it is determined by the NEPA Compliance Coordinator to be required. The Trust will provide notice of such determinations in accordance with § 1010.12. The Trust may prepare or require an EA at any time to assist planning and decision-making.

(b) *Content and format.* An EA is a concise public document used to determine whether to prepare an EIS. An EA should address impacts, including cumulative impacts, on those resources that are specifically relevant to the particular proposal. Those impacts should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The EA shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered, including a No Action alternative.

(4) Environmental effects of the proposed action and the alternatives, including mitigation measures.

(5) Listing of agencies, organizations, and/or persons consulted.

(c) *Finding of no significant impact (FONSI)*. If an EA is completed and the NEPA Compliance Coordinator determines that an EIS is not required, then the NEPA Compliance Coordinator shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Trust as specified in 40 CFR 1506.6.

(d) *Mitigated FONSI*. If an EA is completed and the NEPA

Compliance Coordinator determines that an EIS is required, then prior to preparation of an EIS, the proposal may be revised in order to mitigate the impacts identified in the EA through adherence to legal requirements, inclusion of mitigation as an integral part of the proposal, and/or fundamental changes to the proposal. A supplemental EA will be prepared on the revised proposal and will result in a Mitigated Finding of No Significant Impact, preparation of an EIS, or additional revision of the proposal and a supplemental EA.

§ 1010.12 Public involvement.

The Trust will make public involvement an essential part of its environmental review process. Public notice of anticipated Trust actions that may have a significant environmental impact, opportunities for involvement, and availability of environmental documents will be provided through announcements in the Trust's monthly newsletter, postings on its web site (www.presidiotrust.gov), placement of public notices in newspapers, direct mailings, and other means appropriate for involving the public in a meaningful way. The Trust will conduct scoping with interested federal, state and local agencies and Indian tribes, will solicit and accept written scoping comments and will hold public scoping meetings to gather early input whenever it determines an EIS to be necessary and otherwise as appropriate. Notice of all public scoping meetings will be given in a timely manner. Interested persons may also obtain information concerning any pending EIS or any other element of the environmental review process of the Trust by contacting the NEPA Compliance Coordinator at the following address: Presidio Trust, P.O. Box 29052, San Francisco, California 94129-0052.

§ 1010.13 Trust decision-making procedures.

To ensure that at major decision-making points all relevant environmental concerns are considered by the decision-maker, the following procedures are established.

(a) An environmental document (*i.e.*, the EA, finding of no significant impact, EIS, or notice of intent), in addition to being prepared at the earliest point in the decision-making process, shall accompany the relevant proposal or action through the Trust's decision-making process to ensure adequate consideration of environmental factors.

(b) The Trust shall consider in its decision-making process only decision alternatives encompassed by the range of alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the Trust shall consider all alternatives described in the EIS, a written record of the consideration of alternatives during the decision-making process shall be maintained, and a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Trust.

§ 1010.14 Review of proposals by project applicants.

(a) An EA shall be required for each proposal for demolition, construction, reconstruction, development, preservation, rehabilitation, or restoration of real property submitted by a project applicant to the Trust for its review, and which the decision-maker agrees to consider, unless categorically excluded or covered by a previously prepared EA and/or EIS.

(b) The decision-maker may not take any approval action on such a proposal submitted by a project applicant until such time as the appropriate environmental review documents have been prepared and submitted to the decision-maker.

(c) At a minimum, and as part of any submission made by a project applicant to the decision-maker for its approval, such project applicant shall make available data and materials concerning the proposal sufficient to permit the Trust to carry out its environmental review responsibilities. When requested, the project applicant shall provide additional information that the NEPA Compliance Coordinator believes is necessary to permit it to satisfy its environmental review functions.

(d) With respect to each project proposed for consideration for which

the NEPA Compliance Coordinator determines that an EA shall be prepared, the decision-maker may require a project applicant to submit a draft EA regarding its proposal for the Trust's evaluation and revision. In accordance with 40 CFR 1506.5(b), the Trust shall make its own evaluation of the environmental issues and shall take responsibility for the scope and content of the final EA.

(e) With respect to each project proposed for consideration for which the NEPA Compliance Coordinator determines an EIS shall be prepared, the decision-maker may require a project applicant to pay a non-refundable fee to the Trust sufficient to cover a portion or all of the Trust's anticipated costs associated with preparation and review of the EIS, including costs associated with review under other applicable laws. Such fee shall be paid to the Trust in full prior to commencement of the preparation of the EIS or any amendment or supplement thereto.

(f) In accordance with 40 CFR 1506.5(C), the EIS shall be prepared by the Trust and/or by contractors who are selected by the Trust and who certify that they have no financial or other interest in the outcome of the project, and the Trust shall independently evaluate the EIS prior to its approval and take responsibility for ensuring its adequacy. The EIS shall be prepared in accordance with 40 CFR part 1502.

(g) The NEPA Compliance Coordinator may set time limits for environmental review appropriate to each proposal, consistent with 40 CFR 1501.8 and 1506.10.

(h) The NEPA Compliance Coordinator shall at the earliest possible time ensure that the Trust commences its environmental review on a proposed project and shall provide the project applicant with any policies or information deemed appropriate in order to permit effective and timely review by the Trust of a proposal once it is submitted to the decision-maker for approval.

§ 1010.15 Actions where lead agency designation is necessary.

(a) Consistent with 40 CFR 1501.5, where a proposed action by the Trust involves one or more other Federal agencies, or where actions by the Trust and one or more Federal agencies are directly related to each other because of their functional interdependence or geographical proximity, the Trust will seek designation as lead agency for those actions that relate solely to the Presidio Trust Area.

(b) For an action that qualifies as one for which the Trust will seek

designation as lead agency, the Trust will promptly consult with the appropriate Federal agencies to establish lead agency, joint lead agency, and/or cooperating agency designations.

(c) For an action as to which the Trust undertakes lead, joint lead, or cooperating agency status, the Trust is authorized to enter into a memorandum of understanding or agreement to define the rights and responsibilities of the relevant agencies.

§ 1010.16 Actions to encourage agency cooperation early in the NEPA process.

Consistent with 40 CFR 1501.6, the Trust may request the NPS to be a cooperating agency for actions or projects significantly affecting the quality of the Presidio. In addition, upon request of the Trust, any other Federal, State, local, or tribal agency that has jurisdiction by law or special expertise with respect to any environmental issue that should be addressed in the analysis may be a cooperating agency. The Trust shall use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible consistent with its responsibility as lead or joint lead agency.

§ 1010.17 Actions to eliminate duplication with State and local procedures.

Consistent with 40 CFR 1506.2, the Trust shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between

NEPA and State and local requirements. Such cooperation shall to the fullest extent possible include:

- (a) Joint planning processes;
- (b) Joint environmental research and studies;
- (c) Joint public hearings (except where otherwise provided by statute); and
- (d) Joint environmental assessments and/or Environmental Impact Statements/Environmental Impact Reports.

[FR Doc. 00-23710 Filed 9-14-00; 8:45 am]

BILLING CODE 4310-4R-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226-0250; FRL-6852-7]

Revisions to the California State Implementation Plan, Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Tehama County Air Pollution Control District (TCAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on April 17, 2000, and concern oxides of nitrogen (NO_x) emissions from fuel burning equipment. We are

approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on October 16, 2000.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Tehama County APCD, P.O. Box 38 (1750 Walnut Street) Red Bluff, CA 96080.

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1160.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On April 17, 2000 (65 FR 20426), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule Title	Adopted	Submitted
TCAPCD	4.14	Fuel Burning Equipment	November 3, 1998	May 13, 1999.

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR