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May 25, 2016

Submitted by US mail and via www.regulations.gov

Christine Lehnertz
General Superintendent
Golden Gate National Recreation Area
Attn: Dog Management Proposed Rule, RIN 1024-AE16
Fort Mason, Building 201
San Francisco, CA 94123

RE: CFDG Comment on Special Regulation for Dog Management in the
Golden Gate National Recreation Area (RIN 1024-AE16)

Dear Superintendent Lehnertz,

The Crissy Field Dog Group (“CFDG”) submits these comments in opposition to the referenced proposed draft Dog Management Rule, published on February 24, 2016 (81 Fed. Reg. 9139, ID: NPS-2016-0002-0001) (“Proposed Rule”). This letter supplements comments submitted on May 20, 2016 by our legal counsel, K&L Gates LLP.

We are strongly opposed because the Proposed Rule unnecessarily compresses and restricts off leash recreation which will lead to more confusion and conflict – not less – especially looking into the future. The Proposed Rule will irrevocably change the quality of the urban environment for large numbers of Bay Area residents and visitors – a factor that has not even been analyzed by the National Park Service (“Park Service”). The Proposed Rule is based upon inaccurate assumptions and factual errors which then lead to broad overreaching and unnecessary adverse impacts. In short, despite 15 years of process and thousands of pages of administrative record, the Proposed Rule is flawed but a revised rule can be crafted that would be supported by the record and in compliance with the National Environmental Policy Act (“NEPA”). Set forth below are the details

why the Proposed Rule is flawed and must be revised as well as our recommendations how to fix it.

I. The Proposed Rule Is Based Upon Shifting Assumptions about the Proper Scope of Study, Factual Errors and Flawed (or Undisclosed) Visitor User Data

The Proposed Rule is based upon factual errors, unsupported conclusions and unwarranted assumptions about the effect now, and in the future, of the Proposed Rule in diverting, displacing and dispersing visitors with dogs to neighboring parks, open space as well as to other areas within the Golden Gate National Recreation Area (“GGNRA”) managed by the Presidio Trust. The Proposed Rule is based upon insufficient data to know whether or not the areas allocated under the Proposed Rule can actually accommodate the increased use caused by closing existing areas open for visitors with dogs.

A. The Diversion, Displacement and Dispersion of Park Visitors with Dogs

The Park Service conducted a single survey to determine what would happen to visitors with dogs if the Proposed Rule is adopted and enforced. Even though the survey had a very low response rate and those that responded were uncertain where they would go, the Park Service used this data as the best available. (See SEIS p. 354-55) During the comment period, the Park Service was told by many commenters that:

crowding dogs into smaller areas for off-leash dog walking would result in more dog aggression, with more dogfights and altercations.

(See SEIS p. 355) Even though the Proposed Rule decreases on-leash dog walking by 26.67 acres and off-leash dog walking by 30.9 miles and 107 acres (SEIS p. 373), the Park Service concluded:

- (1) most visitors who currently use GGNRA sites for off-leash dog walking would likely continue to walk their dogs at the GGNRA sites where they currently walk, while some may decide to walk their dogs off-leash in nearby areas; and
- (2) the movement of visitors under the preferred alternative is anticipated to be low, since five GGNRA sites would still provide off-leash dog

walking in ROLAs [i.e., Voice and Sight Control Areas], all the sites considered for dog walking would allow areas for on-leash dog walking, and none of the sites would prohibit dogs.

(SEIS p. 373)

The underlying premise is that so long as there is off leash walking in the GGNRA there will not be movement of visitors. This assumption is factually wrong and not supported in the record. Many of our members have and are submitting comments that they will not be able to drive to the remaining locations on a daily basis. The Proposed Rule will force displacement. The single survey done by the Park Service and relied upon for this assumption does not reflect the reality facing current and future visitors with dogs who will have to go elsewhere. In fact the Presidio Trust, which manages a large portion of the GGNRA, noted the failure of the Park Service to adequately analyze the impacts of the Proposed Rule on the property it manages. (SEIS Appendix p. L54-61)

Unlike many park visitors, those with dogs go to the same location every single day as part of their daily life and enjoyment of the GGNRA.¹ The Park Service analysis of diversion, displacement and dispersion does not take into account the frequency of visits by users with dogs at the same location and often the same time – rain or shine. Moreover, contrary to the stated purpose for the Proposed Rule, the Park Service is ignoring the fact that they are creating conditions for increased conflict by putting more visitors with dogs in fewer confined spaces.

The Supervisors of San Mateo, San Francisco and Marin Counties all recognize the pending impact of the Proposed Rule because of the diversion, displacement and dispersion of visitors with dogs and they have all passed resolutions opposing the Proposed Rule and asking that it be revised. The Park Service is the sole agency that refuses to seriously analyze and evaluate the significant impact of the Proposed Rule on the surrounding community. One survey with a poor response level cannot be the basis for reasoned rule making.

¹ Commenting on park usage knowledgably beyond the experience of our members is difficult because the Park Service has delayed or refused to provide detail park visitation data requiring other dog groups to file a lawsuit to obtain the data. See Comments submitted by K&L Gates on behalf of CFDG May 20, 2016, p. 7, n. 7.

Recommendation

The Proposed Rule must be revised after the Park Service incorporates into its analysis the actual impacts of diversion, displacement and dispersion on both the neighboring parks and open spaces and the actual numbers of visitors with dogs that it is seeking to force into the remaining confined spaces.

B. Ignoring Existing Conditions and Making Biased Comparisons Resulted in a Flawed Proposed Rule

To further compound the error, the Proposed Rule is based upon an analysis that 10-12% of the visitors to the GGNRA are visitors with dogs.² These figures were derived from a comparison of the number of visitors to the entire GGNRA with or without dogs.³ The Park Service then concludes that at least 30% of trails and land covered by the Proposed Rule are available for either on leash or off leash dog recreation.⁴ The agency suggests that is a pretty good result (e.g. 10-12% of the visitors get to recreate in over 30% of the available land). The underlying implication is that the Proposed Rule provides enough space for off leash and on leash dog recreation. This is simply wrong.

First, including visitors to the GGNRA who are visiting those portions of the GGNRA where no dogs are allowed skews the results of the analysis. This is especially troubling because the Proposed Rule and the Park Service analysis ignore the existing opportunities for a no dog experience throughout the remaining acres in the GGNRA managed by the Park Service and the Presidio Trust. The Park Service changes the scope of study from GGNRA wide (is there enough space for visitors with dogs) to site specific (is there enough space for visitors who do not want dogs or are there reasons to confine or restrict dogs) without a rational basis.

Second, the Park Service disregards the existing use at Rancho Corral de Tierra where 60% of the park users were recreating with dogs during the study period.⁵ As we pointed out in our May 27, 2011 Comments on the SEIS:

² Statements by Superintendent Chris Lehnertz at each of the public meetings held on the Proposed Rule.

³ We believe that the estimate of the number of park visitors with dogs is significantly underestimated by the methodology used by Park Service. See Comments submitted by K&L Gates on behalf of CFGD May 20, 2016, p. 8.

⁴ See Proposed-Rule-FAQ Attached as Exhibit 7.

⁵ See DSEIS Reference Materials, Reference No. 7868 Trail Use Study at Rancho Corral de Tierra p. 4

The proposed action to close new lands to dog walking access conflicts with the GGNRA Enabling Legislation (PC 92-589) and with National Park Service Management Policies (2006) for determining uses and land protection plans. GGNRA is required to consider new lands in the same way that it considers uses and land protection measures on lands within GGNRA. The unprecedented "Closed until open" proposal would violate GGNRA's statutory obligation to preserve and maintain recreational uses, violate sound land planning with the community, and violate NEPA by prejudging alternatives before site-specific public and environmental review. There is no basis for treating new lands differently than existing lands under NPS regulations and policies. Furthermore, there is no such policy in the existing GGNRA General Management Plan and Compendium. The Draft Plan/DEIS notes (p. 36), the enabling legislation states GGNRA's purpose as follows (emphasis added):

"In order to preserve for public use and enjoyment certain areas of Marin and San Francisco counties, California, possessing outstanding natural, historic, scenic, and recreational values and in order to provide for the maintenance of needed recreational open space necessary to urban environment and planning, the Golden Gate National Recreation Area is hereby established."

The phrases "preserve for public use and enjoyment" and "maintenance of needed recreational open space" set out a high standard for management actions that would limit or restrict this fundamental value and resource of the GGNRA. The words "preserve" and "maintain" mean the *continuation* of uses, recognizing that uses maybe regulated to protect the other fundamental values of the GGNRA. NPS management policies expressly reflect this emphasis on continuing uses, measured by the yardstick of the unit's enabling legislation. Section 1.4.3.1 [of the Park Service's Management Policies] states:

In determining whether or how to allow the use, park managers must consider the congressional or presidential interest, as expressed in the enabling legislation or proclamation that the use or uses continue.

When new lands become part of GGNRA, the recreational uses existing at the time of acquisition should be allowed to continue unless GGNRA determines, through the public land planning and NEPA process, that unacceptable impairment would occur (as explained in Chapter 1 and Appendix C of the Draft Plan DEIS).

The Proposed Rule rests upon a flawed premise because there has been no baseline established from which analysis of changes could be measured. The Proposed Rule fails to take into account our previous comments and fails to correct the fundamental error of “closed before open.” The Proposed Rule must be revised.

C. Failure to Analyze the Impact of the Proposed Rule on Urban Quality and to Protect Recreation as One of the Mandated Purposes of the GGNRA Undermines the Validity of the Proposed Rule

The Proposed Rule was designed without any regard for the impact on urban quality. The Park Service summarily dismissed its obligation to evaluate the Proposed Rule’s impact on urban quality:

Consideration of this topic is required by 40 CFR 1502.16. The quality of urban areas is not a significant factor in determining a dog management policy for GGNRA. No new building construction or rehabilitation of existing structures is proposed under the alternatives presented in this draft plan/SEIS; *therefore, this topic has been dismissed from further analysis*

(SEIS p. 24 (emphasis added)) The failure to analyze the integration of the GGNRA with the urban environment that exists with respect to continued access to off leash recreation in the GGNRA is contrary to the requirements of NEPA and reasoned rule making. We believe the quality and design of open space and recreation areas, including trails and the manner in which natural restoration and public access are integrated, are fundamental to the quality of the human environment and urban quality. Ignoring the existing use in San Mateo County units as well as the significant concerns raised by local elected officials in all three counties about their constituents’ access to the trail system and beaches with their dogs are just two examples of how the Park Service’s refusal to consider urban quality undermines the validity of the Proposed Rule.

One of the most incredible features of the GGNRA is its existence in the center of a major urban metropolitan area. The interrelationship between the physical environment of the GGNRA and the economic, social and environmental effects of the Proposed Rule on the communities surrounding it are undeniable. During all of the public meetings leading up to the Proposed Rule and even the public information meetings after the Proposed Rule (in March 2016) was announced, many citizens described in detail the importance of the GGNRA and its preeminent place in the urban quality of the neighborhoods and in their lives. The Proposed Rule is impacting the human environment yet the Park Service has not yet considered the direct, indirect and cumulative effects on the urban environment despite the requirement to do so. 40 C.F.R. §1508.14.

The Park Service has also failed to protect recreation as a resource and value of these lands and lacks an adequate non-impairment analysis as required by the NPS Organic Act, the GGNRA's enabling legislation and the NPS's own guidance.⁶ The Park Service has on staff departments headed by the Chief of Natural Resources, the Chief of Cultural Resources, and the Chief of Planning and Compliance – but there is no department or person designated by the Park Service whose function is designated as “Chief of Recreation.”⁷ This puts those in charge of trying to protect and preserve all four goals of the GGNRA in a position of potentially conflicting mandates. Obviously there are many ways to organize and accomplish GGNRA primary goals. We only point out that the Park Service is not structured to protect recreation as it is for the other primary GGNRA objectives. We have suggested a recreation roundtable as one method to provide needed input into solutions for any recreation-related impacts. There are other mitigation measures the Park Service could implement that have not received the hard look required under NEPA.

II. Failure to Take a Hard Look at Other Mitigation Measures

The Proposed Rule is flawed because it does not include less restrictive mitigation measures to achieve the same goals. The Park Service seems to have two rationales expressed at the public meetings on the Proposed Rule for not

⁶ The Park Service recognizes four objectives in the enabling legislation for the GGNRA:

In order to preserve for public use and enjoyment certain areas of Marin and San Francisco counties, California, possessing outstanding natural historic, scenic, and recreational values, and in order to provide for the maintenance of needed recreational open space necessary to urban environment and planning, the [GGNRA] is hereby established.

Public Law No. 92-589, 86 Stat. 1299, § 1 (Oct. 27, 1972) The Park Service asserts that the first two goals (preserving natural resources and historical sites) take priority over preserving scenic and recreational values citing the Organic and the so called Redwood amendments. 16 U.S.C. §§ 1, 1a-1.

⁷ See www.nps.gov/goga/learn/management/stafand offices.htm downloaded May 23, 2016.

incorporating other mitigation measures at specific sites within the GGNRA: (1) either the law or science made us do it; or (2) other users made us do it. Neither of these explanations can withstand close scrutiny.

A. The Law and Science Made Us Do It

We agree that the Park Service should be protecting natural resources, cultural resources, and scenic beauty as well as recreational resources. For example, we have long been a supporter of the Park Service in its efforts to protect the Western Snowy Plover (in the Wildlife Protection Area) at Crissy Field with measures that make sense and work. The result has been that the population of the Snowy Plover has remained constant season after season with the mitigation measures in place.

We do not need to even reach the questions of which of the four goals are paramount under these circumstances. Here we have a rich history of park visitors with their dogs that have used the lands now in the GGNRA for many decades. This is not a hypothetical environment where we must debate what might happen. The starting point of the analysis is what has happened so far. There is nothing in the law or science that mandates the Proposed Rule, which appears to be based solely on sweeping and unsupported assumptions. Here are several data points that are important to note.

1. Law Enforcement Data Does Not Support the Proposed Rule as First Step

Appendix G to the SEIS summarizes law enforcement data related to dogs. During the study period 2008-2011 GGNRA wide, what is striking is the incredibly low incidence of wildlife disturbances, harassment of threatened and endangered species or vegetation damage – especially during the most recent years studied. (SEIS Appendix G, p. G93-96) Most of the violations involve the presence of dogs in restricted areas – an issue that can be addressed by less invasive and restrictive measures such as education.⁸ None of these methods have been tried with stakeholder buy-in here in the GGNRA. There are good examples of where these other mitigation methods have worked.

⁸ For example, see Exhibit 1 (“Voice and Sight Tag Program and Leash Regulations on Open Space and Mountain Parks Lands Baseline Conditions Monitoring Report 2015”) which demonstrates overall compliance with voice and sight control regulations at 67%.

2. Recovery Plans for Threatened and Endangered Species Do Not Require the Restrictive Measures of the Proposed Rule

The Park Service places important emphasis on protection of threatened and endangered species. This emphasis is mandated by federal law and common sense. What is not mandated, however are the broad-brush assumptions that underlie the Proposed Rule. Three threatened and endangered species are prominent in the justification for the Proposed Rule: Mission Blue Butterfly, San Francisco Garter Snake and the California Red-Legged frog (which incidentally is food for the San Francisco Garter Snake). A careful reading of the recovery plans for all three species shows that nowhere are dogs on or off leash discussed.⁹

Instead for two of these species what exists is a two page anonymous document entitled “California Red-legged Frog/California Garter Snake Problem Statement” in which the hypothetical problems are identified as:

Both species are subject to impacts from dogs off-leash in several ways: 1) dogs *may* trample plants the [sic] form cover along the pond edges; 2) pond sediments and habitat *may be* disturbed if dogs access the ponds; 3) dogs accessing the ponds *may also trample tadpoles* of the red-legged frog; and 4) dogs *may* capture frogs and/or snakes causing direct mortality.

(DSEIS Reference Materials No. 1457 (emphasis added)). There is no authority or study cited for these propositions (only the recovery plans which, as noted above, are silent with respect to dogs). There is nothing in the law or science that requires the restrictive Proposed Rule based upon the risk that dogs will step on tadpoles or eat snakes or frogs. There is no evidence in the record that any of these potential risks have ever come to fruition in the decades that there has been off leash walking in San Mateo County. This analysis is simply not plausible. Hypothetical potential threats are an insufficient basis for the Proposed Rule. See *San Carlos Apache Tribe v. U.S.*, 272 F.Supp. 2d. 860, 873-874 (must show such degradation of habitat that will either kill or injure wildlife by significantly impairing essential behavioral patterns including breeding, feeding or sheltering – potential injury is not enough).

CFDG has asked the Park Service to provide copies of three non-public studies that they cite as support for the Proposed Rule in San Mateo County as it

⁹ See DSEIS Reference Materials No. 1489 (Mission Blue Butterfly); No. 1493 (California Red Legged Frog); No. 1573 (San Francisco Garter Snake). There is also no mention of dogs in the critical habitat designation for the California Red Legged Frog (Nos. 1497 and 2072) or in monitoring reports: No. 1721 (San Francisco Garter Snake); No. 7857 (California Red Legged Frog).

relates to the California Red-Legged Frog and the San Francisco Garter Snake but have been told they are entirely confidential because they identify where those species are located so we are unable to comment on those reports.¹⁰ We believe that puts us at an unfair disadvantage because we are unable to make alternative suggestions to achieve the same goals with less restrictive means. We also find it difficult to comprehend that the entire report could be so confidential that it could not be redacted to facilitate management of recreation in the GGNRA, e.g., by allowing CFDG to identify a workable alternative for the San Mateo County units.¹¹ For example the Swain report apparently concludes that the “habitat is rated poor” while the URS report found “suitable aquatic habitat and upland dispersal habitats.” (SEIS p. 282-83) What is important to comment on is whether the trails at issue even include habitat for the species at issue and, if so, whether there are alternative mitigation measures that could accomplish the same goals.¹²

The same problem exists for the Mission Blue Butterfly. There is no showing in any of the monitoring reports that any of the potential threats identified by the Park Service such as trampling of habitat or brushing eggs off of plants, is actually happening or has caused or is likely to cause impairment of essential behavioral patterns including breeding, feeding or sheltering. In fact, the Park Service has resorted to controlled fire burns to try and help the habitat. (See DSEIS Reference No. 1719) The Park Service has noted that:

¹⁰ These documents are: (1) URS Corporation, *Golden Gate National Recreation Area: Sensitive Habitat Mapping for the GGNRA Newly Acquired Lands, San Mateo County, CA* April 2010; (2) Swain Biological, Inc. *2006 Habitat assessment for the San Francisco garter snake on Golden Gate National Recreation Area lands, San Mateo County, California. Unpublished report prepared for the Golden Gate National Recreation Area.* 61 pp.; and (3) *2007 Results of surveys for the San Francisco garter snake at Milagra Ridge and Rancho Corral de Tierra for Golden Gate National Recreation Area, San Mateo County. Final Report.* Unpublished Report prepared for the Golden Gate National Recreation Area. 57 pp.

¹¹ The Park Service relied on 54 U.S.C. § 100707 to avoid production of these reports but did not engage in any findings as to whether CFDG's request falls within the statutory exception for disclosures that would “further the purposes of the System unit in which the resource or object is located.” Given that one of the purposes of the GGNRA is recreation, the Park Service should at least consider this possibility.

¹² In other contexts with limited scientific data, the Park Service has potentially overestimated the severity of environmental impacts. For instance, the National Research Council concluded that, with respect to the Park Service DEIS for the nearby Drakes Bay Oyster Company, the “impact assessments for the resource categories were limited by a lack of scientific information, resulting in moderate to high uncertainty in the conclusions.” See Exhibit 5 (National Research Council, *Scientific Review of the Draft Environmental Impact Statement: Drakes Bay Oyster Company Special Use Permit*, p. 52, http://www.nap.edu/catalog.php?record_id=13461). Here, there is a similar lack of scientific data for on-the-ground impacts throughout the GGNRA, and with respect to impacts on listed species in San Mateo County, we have no way to evaluate the uncertainty in the conclusions based upon the limited information provided.

In the past, periodic fires and Tule elk grazing kept shrubs and trees from taking over these grasslands and provided the disturbance needed to stimulate lupine seeds to germinate. Fire suppression and the loss of elk have potentially contributed to declines in both the quality and quantity of lupine habitat.

(DSEIS Reference Materials No. 1719) It is hard to conceive how Tule Elk trampling and disturbance is good for the Mission Blue Butterfly while dogs are not. There certainly is no science or evidence to support such a conclusion despite decades of off leash recreation in areas where Mission Blue Butterfly exist. For this reason the Proposed Rule is unsupported.

To our knowledge, the Park Service has not consulted with the United States Fish and Wildlife Service (“USFWS”) regarding Alternative A (the No Action Alternative) on the California Red-Legged Frog, the San Francisco Garter Snake nor the Mission Blue Butterfly in the GGNRA. The SEIS nevertheless asserts that “visitors with dogs *could* impact special-status species to a greater extent than visitors without dogs” (pp. 784-85). There is a difference between the USFWS statement that the Preferred Alternative is not likely to adversely affect listed species and the Park Service’s conclusion that the status quo adversely affects listed species and thus the Park Service must act. There is no support in the administrative record for the statement above or the conclusion that the Endangered Species Act compels the Park Service to exclude people with dogs as opposed to all people.¹³ Without support for this premise, the Park Service is acting arbitrarily in adopting the Proposed Rule.

Regardless, education and other mitigation measures can achieve the same goals with less restrictive means. The Park Service has not taken a hard look at good signage, enlisting the cooperation of recreational users, and off leash/on leash transitions in key areas. These are measures similar to what has been used successfully with the Western Snowy Plover at Crissy Field. We have been strong supporters of the education of visitors on how to work with off leash dogs in the GGNRA that has been conducted by the San Francisco SPCA. The national organization of the Society for Prevention of Cruelty to Animals also endorses

¹³ There is also literature that demonstrates that off leash dogs have no effects on the diversity or abundance of birds and small mammals in urban parks. See Exhibit 2 (*Effects of Dog Leash laws and Habitat Type on Avian and Small Mammal Communities in Urban Parks*, Urban Ecosystem (2006) 9:51-66). See also *Effects of Management of Domestic Dogs and Recreation of Carnivores in Protected Areas in Northern California*, Reed and Merenlender, Conservative Biology DSEIS Reference No. 1980 (finding that policy on domestic dogs did not appear to affect species richness and abundance of mammalian carnivores and instead a greater association based upon presence of humans).

education and training for off leash dogs in wildlife areas. See attached exhibits.¹⁴ We endorse training for all visitors, including young children visiting Fort Funston and elsewhere on how to be safe in the presence of dogs. For some students, this may be the first education on these principles that help them interact with dogs both within the GGNRA and in the community at large. See ASPCA training guide attached.¹⁵

B. Other Users Made Us Do It

The second rationale for the Proposed Rule is that other park users and staff required the change. Ironically since the Park Service has determined, we believe incorrectly, that recreation is not a resource that requires impairment analysis it is hard to know what yardstick the Park Service is using to evaluate the demands of other users and staff. The Proposed Rule contemplates that it is acceptable for visitors with dogs in all three counties to go elsewhere for off leash recreation or travel to one of the five smaller remaining off leash sites. However, the Proposed Rule does not apply the same analysis for park visitors who do not want to encounter any dogs. For those visitors, the Proposed Rule assumes that there must be a place at GGNRA for a no dog experience in locations formerly available to off leash recreation without any consideration of other alternatives nearby in the GGNRA for no dog experiences. This double standard undermines the validity of the Proposed Rule.

III. Commercial Dog Walking Time and Weekend Restrictions are Inappropriate and Unnecessary

CFDG strongly supports the continued access to the GGNRA by commercial dog walkers. They bridge an important gap for those park visitors who work during the day and enjoy visiting the GGNRA on weekends or certain days during the week. Because commercial dog walkers are standing in the shoes of the visitors when they cannot exercise their dogs, we strongly disagree with the arbitrary time restrictions as unsupported by the administrative record. There are many commercial dog walkers who use the off leash recreation areas early in the morning, in the evening and on weekends. There is no rational basis to limit access to weekdays eight to five. Life exists beyond 8a – 5p, Monday through Friday -weather, time of year and holidays are not organized around the workday.

¹⁴ See Exhibit 4 (*Training for Outdoor Adventures* <http://www.aspcapro.org/sites/pro/files/subaru-training-for-outdoor.pdf> (accessed May 23, 2016).)

¹⁵ See Exhibit 3 (*Dog Bite Prevention* <http://www.aspcapro.org/pet-care/dog-care/dog-bite-prevention> (accessed May 23, 2016).)

But it is a fact that to be healthy and well-adjusted, dogs need routine and they need regular exercise.

We also strongly disagree with the unnecessary limitation on locations where commercial dog walkers may take their charges. CFDG supports the continued availability of commercial dog walking in San Mateo, San Francisco and Marin Counties where they are presently allowed.

The Park Service has limited data on commercial dog walking in the GGNRA and the impacts of limiting commercial dog walking to those hours.¹⁶ Concentrating all dog walkers into the workday 8 to 5 does not make sense and could increase conflict rather than decrease it.

CFDG also objects to the Proposed Rule's apparent punitive rules, which appear to be a hammer to hold over the heads of commercial dog walkers. The Proposed Rule provides:

In addition, the superintendent may temporarily or permanently revoke a person's dog walking permit, or deny a person's request for a dog walking permit, based upon documented violation(s) of NPS regulations or failure to comply with the terms and conditions of a dog walking permit.

This vague provision does not provide clarity on when and under what circumstances will a commercial dog walker's license be revoked. There are no provisions for education, or rehabilitation. This rule is set up to create conflict through spot checks without the necessary commitment to education, signage, training and other mitigation measures.¹⁷ According to one reported decision, the Park Service maintains a secret database of violators of off leash rules to aid in enforcement, not to identify opportunities for education or training.¹⁸ There

¹⁶ See Industrial Economics, Inc., *Economic Analysis of the Proposed Rule for Dog Management in the Golden Gate National Recreation Area* (January 22, 2106) pp. 5-6.

¹⁷ The Proposed Rule creates an atmosphere of fear and intimidation that has no place in the GGNRA. See Exhibit 6 (*Hesterberg v. United States*, Case No. 13-cv-01265 (N.D. Cal. Oct. 9, 2014)). This case involved the inappropriate use of a taser by Park Service personnel against a park visitor with dogs who had a heart condition. In holding that the Park Service's use of force was excessive and unconstitutional, the court emphasized the fact that the visitor was a "nonviolent, non-serious misdemeanant" who posed no threat to the enforcement officer or the public and that the violation occurred in a newly-acquired GGNRA unit where the Park Service had made no effort to put up signs or distribute notices to the local community that it intended to terminate decades of off-leash dog walking. Such examples raise serious concerns with the approach taken by the Proposed Rule.

¹⁸ See *id.* at 4.

should be a clear path and opportunity for education, rehabilitation and reinstatement – not unknown rules of exclusion.

More importantly, it appears that the regulations on commercial dog walking are too broad. The rule would apply to those who have more than three dogs or are fostering dogs. Again there is no rational reason to apply the commercial dog walking restrictions to those who are not commercial dog walkers. The rule is overly broad and sweeps in significant unintended consequences.

IV. The Proposed Rule's Definitions are Poorly Drafted and Must be Modified

The definitions of “uncontrolled dog” and “unattended dog” are overly broad and unworkable. For example, most commonly acceptable dog play could lead to a violation of the “uncontrolled dog” standard. The Proposed Rule simply lacks common sense and does not consider any provocative acts by other visitors. The standard of “any behavior” is just too broad and vague especially with “kitchen sink” lists of activities. For example, the Boulder Colorado Open Space plan has simpler rules:

- Charging, chasing or otherwise displaying aggression toward any person, or behaving toward any person in a manner that a reasonable person would find harassing or disturbing.
- Charging, chasing or otherwise displaying aggression toward another dog.
- Chasing, harassing or disturbing wildlife or livestock.

The definition of “unattended dog” is simply does not work and does not serve legitimate purposes as written. For example, briefly tying up a dog in a safe place while using the restroom should not be a violation. Similarly, if the rule about not allowing dogs to be unattended were applied across the board, then none of the K-9 units would be able to operate. During the festivities for the Super Bowl held in San Francisco many federal and state agencies contributed K-9 units for the protection of all. Yet if you walked by the parking garage where the K-9 units were parked you could see and hear the K-9 dogs left alone in the units. Walking down the street in San Francisco near federal buildings you can often find a K-9 dog waiting patiently for his handler to return to the unit. There are critical times and situations where dogs should not be left unattended in vehicles but that is just not a blanket rule. Often the temperatures are such that it is quite safe to temporarily leave a dog in the car. In some situations you may have a young dog that needs a long walk and an older dog that needs a shorter walk.

During appropriate times of the day it is entirely safe and practical to leave the older dog in a vehicle.

Sometimes those same circumstances exist for commercial dog walkers who may have dogs that need different lengths of walks or that are staying the day with dog walker while their regular park visitor travels. The harsh rule that no commercial dog walker can ever leave a dog unattended in a vehicle serves no good purpose. The key issue from the Park Services' perspective should be when the dogs are actually out of the vehicle – not when they are in it. This restriction must be modified to eliminate this absolute restriction.

V. The Proposed Rule's Elimination of Dogs from East Beach and West Bluff and Restriction on Dogs at the Grassy Airfield at Crissy Field Is Not Supported by the Record and is Arbitrary and Capricious

Visitors with and without dogs have long shared East Beach at Crissy Field. There is no scientific basis to eliminate dogs from East Beach. This is an extremely popular location for individuals and families alike. It is also a place where individuals who have a hard time walking to take their dogs to recreate off leash. Many are unable to walk along the promenade across the bridge and over the sand to take their dogs. This includes senior citizens, disabled individuals and families with small children and their dogs. During the winter months the Central Beach shrinks due to sea level rising and becomes a location where only the most dedicated and hardy can travel. East Beach with its close proximity to the parking lot is the only place where it is easy for a dog to swim in the water. For most of the day and most of the year, there are very few visitors on East Beach. It is only on the very rare warm days that East Beach becomes crowded and the opportunity for conflict increases. But even then, there is a long history of coexistence and cooperation between multiple users.

East Beach is wider than most parts of Central Beach depending on the tide and offers one of the best locations for different types of recreational activities including beach Frisbee, ball recreation and the place where the board sailors launch. The adverse impact on visitors with dogs if East beach is removed is severe. East Beach is also part of the continuous walk on the promenade that begins there and continues across Central Beach to the Wildlife Protection Area (renamed Western Foredues) , through to West Bluff (on leash) and ending at Fort Point (on leash). The proposal to eliminate dogs at East Beach, the West Bluff Picnic Area, Warming Hut Picnic Area, and the Wildlife Protection Area is unsupported by the administrative record and eliminates the ability to get reasonable exercise in these areas with your dog off leash.

Moreover, the Propose Rule plans fundamental changes by installing fences at the east end of Central Beach and making all of the paths leading from the promenade to Central Beach on-leash. The Proposed Rule changes the off leash areas from open integrated essential components into a dog park with fences. This is the first time the Park Service has proposed that fences be installed at Central Beach. The installation of the fence is unnecessarily invasive and changes the character and feel of the Crissy Field Beach. The Map that is associated with the Proposed Rule shows that Central Beach is four or five times wider than it is depicted on the DSEIS map or even the original DEIS map. The reason is that the Park Service has included all the area adjacent to Central Beach which is underwater as part of Central Beach. The water portions have never been part of the areas included for off leash recreation in terms of acreage counted. Yes dogs and people swim there, but including that area as part of the off leash recreation area actually understates how much of reduction has been made for existing use.

CFDG understands that some people cannot walk on uneven terrain and the promenade is very important for dog walkers to walk their dogs off leash on this level area. We bring this up because one of the biggest safety concern at Crissy Field are of the out of control bicyclists who are mostly tourists who rent their bikes (in huge numbers) and primarily ride along the promenade. The GGNRA needs to address this safety issue that we and other groups and concerned visitors have brought up to GGNRA staff for several years now.

The Proposed Rule also introduces other new elements that were not included in the DSEIS. For example, what used to be the Wildlife Protection Area (for the western snowy plover) has now become the Western Foredues with no explanation. Does that mean this is no longer a wildlife protection area? There are six new trails for existing paths that have come out of nowhere. These “trails” were not included in the DSEIS. These trails do not allow for dog walking.

The restriction on the Grassy Airfield is also unsupported on the record. Often the Grassy Airfield is used for special events. Moving the access area for dogs off leash towards the road and to the west exacerbates the adverse impacts on recreation. Because the Park Service has not conducted an impairment analysis of the effect of the Proposed Rule on visitors with dogs at Crissy Field, the Proposed Rule arbitrarily “divides the pie” without a rational basis for eliminating decades of existing off leash recreation use. If anything, the need for off leash recreation has increased not decreased since Crissy Field was established.

The Proposed Rule transforms Crissy Field from an integrated open space into zones divided for use. These are not resource driven decisions but according to the Park Service a desire to kick out on group of visitors (with dogs) with have shared and coexisted with other park users for decades – to give the space to others. The Park Service has not done an impairment analysis of the severe dramatic negative impact on visitors with dogs as compared too other recreational uses. The Park Service has not done an analysis of other opportunities for visitors who want a no-dog experience. The Park Service has determined that it is acceptable to force visitors with dogs to drive to other locations but has not considered that alternative for visitors who want a no-dog experience. But most importantly, the Park Service is ignoring the decades of coexistence that has in fact worked.

The Proposed Rule will have immediate negative impacts on a very large population of visitors with dogs and those who enjoy having dogs on the beach even if they do not have a dog. The limited study information that the Park Service has demonstrates the high numbers of visitors with dogs. But even those studies undercount the number of visitors with dogs because if more than one person was walking with a dog – only one person was counted. For most times of day and days of the week, the only visitors who use East Beach are those with dogs. Often unfavorable weather conditions or tides keep other visitors off the beach. During those periods there is no benefit for visitors who want a no-dog experience because they are not there and there is no evidence that they would be there.

CFDG strongly recommends that East Beach, the Promenade, and the Grassy Airfield remain off leash recreation areas. We recommend that the Park Service continue the seasonal restrictions for Wildlife Protection Area, as the on leash/off leash approach is working. We recommend that Fort Point, Warming Hut Picnic Area and the West Bluff Picnic Area continue to be on leash.

VI. Baker Beach

The Proposed Rule changes Baker Beach from entirely open to visitors with dogs off leash to no dogs on the northern portion of Baker Beach and leash only on the southern portion. The reasons given for this change were to provide a no-dog experience and because of shorebirds. First, there is a no dog experience at China Beach that is directly adjacent to Baker Beach. Second, the Proposed Rule goes too far in completely eliminating any off leash recreation without any baseline study or demonstration that the existing off-leash recreation has had an adverse impact at Baker Beach on shorebirds.

The data relied upon by the Park Service shows that off leash recreation at Baker Beach is less than at other locations. This undermines the analysis that the smaller population of off leash dogs is causing the impact suggested. There is no scientific basis to displace, divert and disperse the existing off leash recreation out of Baker Beach in its entirety.

During one of the GGNRA March 2016 Public Information Meetings held in San Francisco, GGNRA's Mike Savidge stated that GGNRA wanted one of the beaches in San Francisco to be a "no dog" experience, and because Baker Beach had "low usage" according to their information, it was selected to be a no dog beach in the Proposed Rule. No scientific rationale was given for this closure at the meeting. Baker Beach is enjoyed by multiple users and is very popular. Again, China Beach is directly adjacent to Baker Beach and has never allowed dogs.

CFDG is concerned that the closure of Baker Beach to off leash dog walking coupled with the significant closures of off leash dog walking at Crissy Field, will create more congestion and conflict at Central Beach and the Grassy Airfield at Crissy Field.

We are also concerned that this proposed action will mean that a large number of dog walkers and commercial dog walkers will go to San Francisco City parks to walk their dogs instead and creating a further burden on City parks.

CFDG recommends the Proposed Rule be revised to allow continued off leash recreation at Baker Beach coupled with mitigation measures suggested in this document.

VII. Recommendations

Off leash dog recreation has existed on GGNRA lands for decades (including the newly added San Mateo lands). The 1979 Pet Policy and the existing use in San Mateo County provide a baseline against which the Proposed Rule must be measured. We have proposed alternatives that would address the specific concerns raised by the Park Service and others in the context of mitigating actual resource or visitor use impacts on the ground in the GGNRA. The problem has been the Park Service's unwillingness to use mitigation measures with stakeholder buy-in. The Proposed Rule does not have stakeholder buy-in because of serious flaws in its design and proposed implementation. We recommend the

following set of actions that would be supported by the administrative record and workable:

- Specific Mitigation measures directed at observable direct, indirect and cumulative impacts such as currently being used in the Western Snowy Plover Protection Area at Crissy Field. These include reasonable environmental design measures for post and cable fencing, better signage, vegetative barriers and community education programs.
- Establishing a Recreation Roundtable where specific concerns and issues can be addressed by a tri-county community roundtable (as occurred with the establishment of the dog rinse station at Crissy Field to eliminate conflict between park visitors with dogs and those with board sails).
- Establishing an enforcement strategy that is based upon the Boulder Colorado Open Space tag program where those who fail to comply with the rules are subject to education, training, and evaluation, and only subsequently (if these primary management alternatives fail) enforcement actions.
- Using reasonable and understandable definitions for conduct while recreating in the GGNRA with dogs.
- Avoiding the concentration of off leash recreation in smaller areas and the unnecessary elimination of off leash recreation in San Mateo and Marin Counties.
- Allowing historical off leash recreation as identified in the 2010 Trail survey to continue (DEIS Reference No. 7868 *Trail Use Study at Rancho Corral de Tierra*)
- Modified 1979 Pet Policy (with modifications to protect the Western Snowy Plover) with additional mitigation measures described above and as further described in the K & L Gates Comments submitted on May 20, 2016.
- Development of a meaningful adaptive management program such as identified in the K&L Gates Comments submitted May 20, 2016.

Stakeholder buy-in is essential to an effective rule. CFDG has a history of working cooperatively with other stakeholders such as the Golden Gate Audubon Society (in connection with the Western Snowy Plover), the San Francisco SPCA (off leash open space dog training classes) and with San Francisco Board Sailors (dog rinse station). In addition, for many years we have provided the bags in the dispensers for pet waste disposal at Crissy Field and have sponsored clean up

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General Superintendent
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days. We believe these are examples of cooperation and coexistence that have worked and can continue to work in the GGNRA.

Request for Revised Rule

In these comments, we recommend specific significant changes to the Proposed Rule to drastically reduce the unnecessary and burdensome impacts while still achieving the stated goals and objectives. A revised rule that addresses the defects identified in this comment letter and the letter submitted by our counsel, K & L Gates, on May 20, 2016 is likely to differ sharply from the Proposed Rule. It is unlikely that a revised rule will be a logical outgrowth of the Proposed Rule. Therefore, CFDG requests that the Park Service provide notice and an additional opportunity to comment on the revised rule.

Sincerely,

Martha Walters

Martha Walters, Chair
Crissy Field Dog Group

cc: Secretary of the Interior, Sally Jewell
Nikki Buffa, Deputy Chief of Staff, Secretary of Interior Sally Jewell
Jon Jarvis, NPS Director
Democratic Leader Nancy Pelosi
US Senator Dianne Feinstein
US Senator Barbara Boxer
Congresswoman Jackie Speier
Congressman Jared Huffman
National Parks Service, Assistant Solicitor, PWD, DOI, Robert Eaton
GGNRA Superintendent Chris Lehnertz
San Francisco Mayor Ed Lee
San Francisco Supervisor Scott Wiener
San Francisco Supervisor Katy Tang
Marin County Supervisor Kate Sears
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San Mateo County Supervisor Don Horsley
Jennifer Scarlett, Co-President, San Francisco SPCA
Nancy McKenny, CEO, Marin Humane Society

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General Superintendent
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Enclosures