

May 20, 2016

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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

This firm represents the Crissy Field Dog Group (“CFDG”) in connection with the above-referenced proposed draft Dog Management Rule, published on February 24, 2016 (81 Fed. Reg. 9139, ID: NPS-2016-0002-0001) (“Proposed Rule”), and we are submitting comments on its behalf. CFDG is also submitting letters and the comments in this letter are meant to support and supplement the comments in those letters.

CFDG appreciates the opportunity to comment on the Proposed Rule. However, after reviewing the rule in depth, CFDG has serious concerns that are outlined in detail below, and we write to express its strong opposition to adoption of the Proposed Rule. As described below, the rule as drafted is arbitrary and capricious, violates the National Environmental Policy Act (“NEPA”), and, in several instances, the definitions are so vague or overbroad they are unenforceable and of no practical effect. In light of the significant issues presented in the current draft, should the National Park Service (“NPS”) seek to adopt any form of the Proposed Rule, it must be substantially revised and subject to an additional round of public comment.

CFDG has worked with the NPS on off-leash dog recreation issues in the Golden Gate National Recreation Area (“GGNRA”) for 16 years, including participation in the environmental impact review processes on the Proposed Rule, the GGNRA General Management Plan, and prior to those processes, as a member of the Negotiated Rulemaking Committee for dog management. During this time, CFDG has invested significant resources in the management and maintenance of the GGNRA, and in particular at Crissy Field, for which CFDG has raised money and coordinated volunteer efforts to facilitate maintenance and upgrades that the GGNRA has lacked the resources to provide (e.g., dog wash station, monthly cleanup parties, and supplying trash bags). CFDG has also made significant efforts to promote responsible use of the GGNRA through the production

and distribution of educational videos and partnerships with the Golden Gate Audubon Society on educational outreach related to protection of the Western Snowy Plover. CFDG submits the following comments based on both its role as an off-leash dog advocate and an environmental steward.

I. Introduction

CFDG has several serious concerns about the content of the draft Proposed Rule, summarized briefly as follows:

- The proposal lacks a scientific basis to support significantly reducing the GGNRA acreage for dog walking, including off-leash dog walking. Without this information, the proposal is arbitrary.
- The proposal reduces acreage for dog-walking beyond the Preferred Alternative of the Draft Supplemental Environmental Impact Statement (“DSEIS”). The NPS needs to modify the proposal or supplement the DSEIS.
- The proposal does not protect recreational dog-walking and violates the NPS Organic Act, the act establishing the GGNRA, and the Administrative Procedures Act (“APA”). The NPS must protect dog-walking recreation as one of the central purposes of GGNRA lands.
- The proposal imposes “additional closures or restrictions” that are both impractical and unlawful, violating NEPA and the APA. The NPS should incorporate meaningful elements of the City of Boulder’s “Green Tag” Program, as long advocated by CFDG.
- The proposal lacks a workable and meaningful definition of “dog walking” and thus fails to give the public adequate notice of the conduct that will trigger enforcement.
- The proposal includes overbroad and unsupported definitions of “uncontrolled dog,” “unattended dog,” and “authorized persons.” This will result in unworkable, inconsistent and unfair enforcement.
- The proposal fails to substantiate why the NPS might close the GGNRA to commercial dog walkers (“CDWs”). CFDG strongly supports CDWs in the GGNRA.
- The text of the proposal does not match the maps illustrating the Proposed Rule, creating further questions about adequate notice to the public and effective communication and enforcement of the rule.

- The proposal rests on the recently adopted GGNRA General Management Plan (“GMP”). The GMP fails 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.
- The NPS failed to comply with NEPA, including: (i) its prejudgment of the outcome of the Dog Management Plan when the GMP designated “natural management” zones prohibiting dog walking, and “diverse opportunities” zones for recreation, (ii) issuance of interim CDW permit requirements, and (iii) numerous deficiencies in the DSEIS detailed below, including the notable total lack of analysis on urban quality, and an inadequate and incomplete dispersion analysis.

In summary, the Proposed Rule violates the NPS’s mandate to protect recreation (including dog walking), the APA, NEPA, and applicable USDOJ regulations and guidance.

II. CFDG’s Requests

The Proposed Rule should not be adopted, and given the significant issues in the current language additional public comment (and likely, additional environmental review) will be required on the necessary revisions to the rule, which are material and substantial. CFDG respectfully requests that the NPS adopt a modified version of Alternative A in the DSEIS. Modifications to Alternative A should include several important mitigation measures, such as a recreation roundtable, reasonable design measures,¹ and an enforcement strategy based on the Boulder Green Tag program, to protect environmental resources and prevent user conflict, as well as allowing off-leash dog walking to continue on San Mateo County lands where it historically occurred.² Without fundamental changes to the current draft Proposed Rule, the NPS will be proceeding down a path toward an unenforceable rule that presents significant practical obstacles to enforcement (e.g., vague definitions, unclear scope), fails to fulfill the NPS’s obligations under other laws, and lacks stakeholder buy-in from the key regulated community of dog walkers.

¹ This should include post and cable fencing around sensitive species, better signage, and vegetative barriers similar to those at Crissy Field which have been very effective.

² As we have explained previously, there is no basis for treating new lands (i.e., those acquired subsequent to issuance of the 1979 Pet Policy) differently than existing lands under NPS regulations and policies. Both are governed by the GGNRA’s enabling act, which requires the NPS to manage to “preserve for public use and enjoyment” and “maint[ain] needed recreational open space,” both of which suggests that the NPS should continue recreational uses in place at the time of acquisition. Off-leash dog walking has been a fundamental recreational value of the San Mateo units of the GGNRA (e.g., Rancho Corral de Tierra) for decades, which the NPS has arbitrarily restricted by enforcing its general pet regulation (which only permits on-leash dogs) prior to completion of the Dog Management Plan/EIS process. The NPS has inaccurately described the “no action” alternative for these units as continued implementation of the general pet regulation. NPS is obligated to protect this fundamental value and resource of the GGNRA unless and until the NPS determines, through the public land planning and NEPA process, that unacceptable impairment would occur.

If the NPS proceeds with the Proposed Rule, it must remedy the deficiencies in its environmental review and decision-making as follows:

- Develop additional facts and analysis to support: (i) the reduction in recreation overall, and (ii) the reduction of recreation between the DSEIS and the Proposed Rule, including production of such data for public review and additional public comment;
- Analyze and incorporate core elements of the City of Boulder’s Green Tag Program such as:
 - Require all off-leash dog walkers to complete training and register with the NPS;
 - Incorporate a “first warning” provision in which no citation can be issued unless an alleged violator has been warned in the prior twelve months;
 - Apply restrictions, suspensions, and revocation of privileges to individual dog walkers rather than the entire community using a particular area of the GGNRA.
- With respect to the text of the Proposed Rule and accompanying maps:
 - Revise the “additional closures or restrictions” provision and create an adaptive management program³ with standards for monitoring, a range of management alternatives, and a mechanism for stakeholder involvement;
 - Continue to allow commercial dog walking in the GGNRA;
 - Develop a meaningful and reasonable definition of “dog walking” and clarify the definitions of “uncontrolled dog,” “unattended dog,” and “authorized person” to ensure the final rule is workable, enforceable, and effective;
 - Eliminate the time use limitations, insurance, and training requirements for individual dog walkers with four to six dogs, particularly if they are fostering dogs that would otherwise be euthanized; and
 - Correct errors in the text and maps of the Proposed Rule for consistency;
- Re-issue the Proposed Rule (as modified) for another round of public comment and conduct other process as necessary (e.g., updating the GMP, any additional necessary NEPA review, etc.);
- Conduct a non-impairment analysis to evaluate impacts to recreation; and
- Supplement the DSEIS to analyze dispersion, recreation, and impacts to urban quality and correct the environmental baseline for analysis of GGNRA units in San Mateo County.

³ CFDG submitted an example of such an adaptive management program with its comment letter dated May 27, 2011.

While CFDG appreciates all of the effort the NPS has put into creating the Dog Management Plan (“DMP”) and Proposed Rule, unfortunately, the latest results do not represent an effective regulatory scheme. Without a rule that addresses the defects identified by CFDG and others and gains broad stakeholder buy-in, the communities in San Francisco, Marin, and San Mateo Counties (and the GGNRA) will be saddled with a rule that is unenforceable, impractical, and unwieldy to administer, creating the need for additional process and revision going forward. A clear and enforceable rule is particularly necessary given the critical role that the GGNRA plays in the San Francisco metropolitan region’s urban landscape as open space that is essential to the quality and design of the urban environment.

CFDG urges the NPS to take this critical opportunity to correct its course on the Proposed Rule, and undertake significant revisions that do not unduly restrict dog walking.

III. The Proposed Rule unduly restricts dog walking recreation in the GGNRA, and fails to protect this core recreational use of the GGNRA.

The Proposed Rule unduly, and without adequate basis, reduces recreational opportunities available to dog walkers in the GGNRA.

A. There is no rational basis for restricting dog-related recreation in the GGNRA.

The Preferred Alternative in the 2013 Draft Supplemental Environmental Impact Statement (“DSEIS”) proposed significant reductions in dog walking access to GGNRA units governed by the 1979 Pet Policy.⁴ The Proposed Rule builds on these reductions, proposing to further limit recreational opportunities available to dog walkers, but without explaining any need to depart from the Preferred Alternative. The NPS has spent years in a process to reduce dog-related recreation in the GGNRA, without any data demonstrating site-specific impacts anywhere in the GGNRA.⁵ The NPS’s emphasis on elimination of dog-related recreation is most striking given the NPS’s failure to implement available, inexpensive, and effective mitigation measures that could address the purported environmental impacts of off-leash dogs (e.g., post and cable fencing to minimize damage to vegetation and wildlife habitat, or better signage, design solutions, education and enforcement to address user conflicts) or pursue other activities that would more directly benefit vegetation and wildlife (e.g., invasive

⁴ The DSEIS decreased access to off-leash dog walking by 30.9 miles of trail and 107 acres of other areas and increased dog restrictions (e.g., from “voice control” to “on-leash only”) in 13 of the 18 units covered by the Dog Management Plan. Of the most popular GGNRA units for off-leash dog walking, the Preferred Alternative eliminated off-leash dog walking at three units and substantially reduced the area available in the remaining four GGNRA units. DSEIS, p. 373.

⁵ Indeed, the only analysis of environmental impacts due to off-leash dog walking in the GGNRA looked at 70 acres at Crissy Field and found no adverse impacts. *Environmental Assessment for Crissy Field Plan* (June 1996).

plant removal). If the NPS wants to restrict dog-related recreation in the GGNRA, the NPS needs data and analysis to support its decision. Anything less is arbitrary.

B. The NPS has an obligation to protect dog-related recreation.

Fundamentally, eliminating dog-related recreation is inconsistent with the NPS's mandate to manage the GGNRA as an urban recreation area. Public Law No. 92-589, 86 Stat. 1299, § 1 (Oct. 27, 1972) provides that: "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." This law directed the NPS to "utilize the resources in a manner which will provide recreation and educational opportunities...." *Id.* (emphasis added).

Congress specifically contemplated dog walking as the type of recreation for which the GGNRA was established. H.R. REP. 92-1391, 92ND Cong., 2ND Sess. 1972, 1972 U.S.C.C.A.N. 4850, 4852 (Sept. 12, 1972) (including dog walking in a list of recreational activities). In the rubric of the NPS's Management Policies, recreation is a "resource" or "value" that NPS needs to protect, given its identification by Congress as a purpose of the GGNRA lands. NPS, Management Policies (2006), Sections 1.4.3, 1.4.6. Notably, the nonimpairment determination for the General Management Plan, recently adopted, failed to protect recreation as a resource of the GGNRA.⁶

The NPS's failure to protect recreation violates the NPS Organic Act and the act establishing the GGNRA, and therefore the Proposed Rule, if adopted, would violate the APA by failing to properly account for a core purpose of the lands, which must be a central factor in its decision-making. This is not a question of striking the appropriate balance between competing uses, but rather, a fundamental error.

The NPS's obligation to protect recreation must also be viewed in the urban context in which it arises. The GGNRA is unique among NPS units in that it is an urban recreation area located both at the urban core, and throughout the surrounding areas of a major United States metropolitan area. These public lands serve a critical role in providing open space to the residents of San Francisco, Marin and San Mateo Counties. Unfortunately, the NPS has failed to take this critical factor into account, by entirely overlooking the profound impact on the quality and fabric of the urban neighborhoods in which GGNRA units are located. This is more than an environmental impact review issue – it goes to the fundamental policy decision being made by the NPS. Without a cogent analysis of how the GGNRA fits into its urban surroundings, the NPS cannot meet its obligation to protect urban recreation for millions of Bay Area residents. Not only must the NPS correct the significant

⁶ See CFDG comments dated May 20, 2014.

gaps in its environmental review, but once it does, the NPS must integrate an urban quality analysis into the substantive decision-making process of how to manage the GGNRA as an integral component of many Bay Area neighborhoods and a key element of the urban quality of those communities. Dog walking is at the heart of these issues, and the current Proposed Rule – uninformed by any analysis of urban quality – gets it wrong, and is without adequate justification as to the needs of the populations the GGNRA serves.

We understand that, in public meetings, the NPS has referenced the need to address the concerns of the “empty chair,” i.e., park users who oppose the presence of dogs in the GGNRA and silently support the Proposed Rule. There is an overwhelming opposition to the Proposed Rule in written comments from the dog walking community. It is arbitrary and capricious for the NPS to rely on concerns by unidentified, silent, “empty chair” members of the public to override its statutory obligation to protect recreation such as dog walking.

Without correcting this foundational issue, the Proposed Rule cannot comply with the NPS’s legal mandates to protect the resources and values of these lands. Accordingly, CFDG requests that the NPS reevaluate the Proposed Rule in light of a proper, lawful context that protects resources like dog walking. This will necessarily require reopening of the GMP, because the GMP has created a faulty foundation on which the Proposed Rule is now built. Without a proper non-impairment analysis that protects recreation as a resource and value under the GMP, the Proposed Rule rests on an improper series of interpretations of the GGNRA’s legal authority.

C. There is insufficient data to demonstrate that the NPS is providing adequate acreage for dog-related recreation.

The NPS does not have sufficient data on the GGNRA units to demonstrate it is meeting its statutory obligation to protect recreation. Several dog groups submitted a Freedom of Information Act request in 2015 requesting data on current dog walking usage and total visitation broken down by unit, but the NPS has thus far refused to provide its data, and a lawsuit to compel production of this data is currently pending.⁷

For example, the FOIA suit seeks basic information such as the number of users that utilize each area of the GGNRA with dogs. NPS cannot reasonably conclude that the space designated for dog walking access, both on-leash and off-leash, is adequate if it does not have accurate information on the number of dog walkers visiting each unit of the GGNRA, as requested in the FOIA lawsuit. Until this data becomes available, the administrative record will be incomplete and any rulemaking insufficiently supported.⁸ CFDG therefore

⁷ *Save Our Recreation et al. v. US Dep’t of the Interior*, Case No. 3:16-cv-01724 (N.D. Cal.)

⁸ *Owner-Operator Indep. Drivers Ass’n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007) (“An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.”).

requests that the NPS withdraw the Proposed Rule and/or withhold issuance of the final rule until it provides the public with a meaningful opportunity to review and comment on this data.

To the extent that the NPS lacks a sufficient data set on dog-related recreation, the NPS cannot establish that it is sufficiently protecting a core purpose of the GGNRA. The data that NPS has previously presented on dog-related usage is limited, inconclusive, and likely represents an underestimate of dog walking activities. For example, it appears that the NPS is calculating the proportion of dog walkers as a percentage of total visitors to all GGNRA units—including units where dogs have never been allowed and which are not subject to either the 1979 Pet Policy or the current rulemaking, such as Alcatraz. Using total visitation in the denominator minimizes the popularity of off-leash dog walking in the GGNRA units where such activity is allowed to occur.

Indeed, the NPS's own usage study (conducted by Industrial Economics, Inc. ("IEC")) contains data suggesting that the agency is underestimating dog walking, and also disclosed certain limitations that would undermine the NPS's findings that dog walking is not a popular activity in the GGNRA:

- The IEC report found dog walking rates as high as 33% and 76% at Fort Funston and Crissy Field, respectively.
- If the researchers saw two people walking with a single dog, they only counted one of the people as a dog walker (IEC Study, p. 22), which may discount dog-related recreation by as much as 50%.
- The researchers only counted visitors to the promenade at Crissy Field, not the beaches or the airfield (IEC Study, p. 5).

It therefore appears that the NPS has meaningfully underestimated dog walking activity, thereby further compounding its failure to provide adequate accommodation and space for dog walking by underestimating the popularity of this core purpose of the GGNRA. Without basic data of the type identified in the FOIA request, the NPS cannot accurately assess any of the categories of conflict (i.e., dog/dog, dog/human, and dog/wildlife) let alone make any well-informed decision on how to balance different recreational uses.

D. The Proposed Rule fails to protect dog-related recreational opportunities throughout the GGNRA.

The Proposed Rule fails to adequately protect recreation throughout the widely distributed range of the GGNRA, which encompasses 80,000 acres in three counties. For example, the NPS has consistently refused to designate any off-leash areas in San Mateo County. Moreover, the only Voice and Sight Control Area in Marin County features dangerous surf that presents serious risks for families who want to bring both their dogs and children to

recreate together. The Proposed Rule also forecloses the possibility of configurations that are more evenly distributed in a geographic sense in the future. As currently drafted, the Proposed Rule only allows NPS to designate “trails” in new units as “on-leash” regardless of the potential for environmental or public safety impacts. Thus, if the NPS acquires new areas to add to the GGNRA, the Proposed Rule appears to prohibit off-leash dog walking in these new areas, even if that type of recreation is consistent with protection of natural resources and public safety.

E. The Proposed Rule maps misrepresent the area available to recreation.

Even within the GGNRA units subject to the Proposed Rule, the NPS’s presentation of the Proposed Rule makes it appear as though more space is available for dog walking than is actually the case. For example, the Proposed Rule maps identify parking lots as accessible for on-leash dog walking. CFDG recognizes the practical need to designate these areas as open to dog walking but parking lots should not count toward the acreage available for dog walking any more than it would count toward other forms of recreation. Even assuming the NPS has accurate and comprehensive data on usage by dog walkers (which it does not, as described above), this would misrepresent the true area available for recreation and skew the analysis of whether the NPS has provided sufficient acreage for dog-related recreation in the GGNRA.

F. The NPS cannot rely on acreage outside the GGNRA to meet its obligations.

Instead of meeting its statutory mandate to protect recreation, NPS has consistently taken the position that off-leash dog walking access is something that other agencies should provide on non-GGNRA lands.⁹ But this approach takes the NPS’s legal obligation to protect recreational uses of the GGNRA and turns it on its head.¹⁰ The NPS cannot rely on other agencies, land trusts, and/or municipal entities that manage adjacent lands and offer off-leash dog walking opportunities to meet its own statutory obligations. The enabling act for the GGNRA is clear and mandates that the NPS provide recreational opportunities at GGNRA, and the Proposed Rule fails to do so.

⁹ See, e.g., DSEIS pp. 111–112 (directing “[l]ocal visitors looking for an off leash dog walking opportunity [to] the adjacent network of trails managed by the Homestead Valley Trust on the eastern boundary of the site where off leash dog walking is allowed.”); 117 (“the [NPS] does not see a definite need for a [Voice and Sight Control Area] at this location, since there are [off-leash] options available on nearby San Francisco beaches.”).

¹⁰ This position is also inconsistent with the NPS’s position in the DSEIS that the restrictions imposed by the Dog Management Plan will not result in dispersion to nearby City and County parks and private lands open to the public accompanied by increased environmental impacts and user conflicts.

G. The NPS should reconsider and revise the Proposed Rule.

As currently drafted, CFDG is concerned that the Proposed Rule will foster a culture of harassment and confrontation, especially given the dramatic departure from historic practices and the enforcement issues and ambiguities identified in this letter. CFDG reiterates its support of a modified version of Alternative A (the No Action Alternative) from its comment letter on the DSEIS and therefore withdraw the Proposed Rule. The NPS should consider adoption of a modified Alternative A that includes reasonable mitigation measures and management strategies, such as a recreational roundtable, Green Tag management program based on the program in Boulder Colorado, and sensible design features to signal different usage areas to users.¹¹ In the alternative, CFDG respectfully requests that the NPS revise the Proposed Rule to address the concerns outlined in this letter.

IV. The Proposed Rule does not comply with the APA, NEPA, the NPS's own regulations, and USDOJ guidance.

It would be arbitrary and capricious for the NPS to issue the current draft as a final dog management rule because the Proposed Rule is inconsistent with the APA, NEPA, USDOJ guidance, and the NPS's own regulations.

A. The Proposed Rule does not explain the NPS's basis for further reducing recreational opportunities for dog walking from the DSEIS Preferred Alternative and does not provide adequate notice of this reduction.

The first significant problem is that the Proposed Rule is more restrictive than the Preferred Alternative in the DSEIS, an alternative which the NPS described as "best meet[ing] the objectives of the [Dog Management Plan]."¹² The Administrative Procedures Act ("APA") requires agencies to base their decisions on a "rational basis." 5 U.S.C. § 706(2)(A). There is no rational basis for NPS to reduce dog walking opportunities except for the conclusory statement in the preamble that the agency acted "based on public comment and further analyses." (Proposed Rule, p. 10)

In fact, the preamble does not disclose what appears to be a significant net loss of dog walking space between the Preferred Alternative in the DSEIS and the Proposed Rule – the language only discloses the elimination of off-leash dog walking in one of the units (Fort Baker). Instead, in order to identify impacts on recreation, one must closely examine the maps accompanying the Proposed Rule and the Preferred Alternative maps in the DSEIS. In doing so, CFDG concludes that the only consistent additions to areas open to dog walking are parking lots. While CFDG recognizes and appreciates the practical need to

¹¹ CFDG's full proposal will be submitted under separate cover.

¹² DSEIS at 110.

identify parking lots as open to dog walking, the NPS does not otherwise treat parking lots as appropriate locations for dog-related recreation, such as in the GMP.¹³ Therefore, as noted above, parking lots should not count toward the total acreage available for off-leash recreation, which misrepresents the true area available for dog walking.

The following examples illustrate the loss of dog walking opportunities between the Preferred Alternative and the Proposed Rule:

- At Crissy Field, the NPS eliminated dog access to the far eastern and western portions of the unit. The NPS also moved the Voice and Sight Control Area from the eastern half of Airfield to the center of the Airfield. This latter fact is most significant because the DSEIS recognizes that special events generally shut down the western half of the Airfield. DSEIS p. 116. This makes it far more likely under the Proposed Rule than the Preferred Alternative that the NPS will temporarily close the Voice and Sight Control Area for a special event and permanently close it in the long-term due to the increased likelihood of user conflicts.
- In another area of Crissy Field (referred to in the Proposed Rule as “Fort Point”), the NPS eliminated dog walking access to the West Bluff Picnic Area. While the NPS provided dog walking access to three new areas in this unit, one is a parking lot and the other two do not even come close to replacing the acreage lost at the West Bluff Picnic Area.
- At Fort Mason, the NPS eliminated all dog access to green space on either side of the trails in the eastern and northeastern sections of the unit – thus eliminating opportunities for picnicking, sunbathing, and other quiet activities with dogs on leash.
- At Stinson Beach, NPS reduced the area available for on-leash dog walking in the North Picnic Area and eliminated dog access to the South Picnic Area without providing any justification. Dogs are effectively allowed only in difficult to distinguish portions of the parking lots and a short (175-foot) length of trail leading to an adjacent County-managed beach where off-leash dog walking is allowed.

The NPS has not provided adequate notice and also has not explained the basis for its decision to propose a rule that even further reduces the area available for dog walking and is inconsistent with the Preferred Alternative. Without a sufficient basis for these reductions, the Proposed Rule is inconsistent with the APA and NEPA – to date no basis has been articulated. If the NPS decides to proceed with rulemaking, the NPS needs to either modify the Proposed Rule to match the Preferred Alternative in the DSEIS (which would require an

¹³ The General Management Plan, for instance, includes parking lots in the Diverse Opportunities Zone but distinguishes between parking lots (which count as "support facilities") and "recreational facilities" (e.g., trails). GMP, p. I:66.

additional round of public comment)¹⁴ or clearly and transparently explain the basis for deviating from the Preferred Alternative. It may also be necessary to again supplement the environmental documents required by NEPA to support NPS's decision to reduce recreational opportunities in the GGNRA.

B. The Proposed Rule's provisions on "additional closures or restrictions" are inconsistent with other NPS regulations, the DSEIS, and US Department of Interior guidance.

1. *The Proposed Rule sidesteps NPS procedures governing closures and restrictions and departs from its ordinary procedures without any rational basis.*

The second major issue with the Proposed Rule is that, as drafted, the NPS is trying to do with the Proposed Rule what is otherwise prohibited by its own regulations, i.e., make significant changes to GGNRA recreational access and usage without rulemaking. The Proposed Rule purports to authorize the NPS to temporarily or permanently close a GGNRA unit based on lack of compliance with the Proposed Rule and because of special events, "implementation of management responsibilities," infrastructure projects, or "other factors within the discretion of the superintendent." (Proposed Rule, p. 38) The only procedural requirement is that the NPS provide public notice for such closures. *Id.* There is no requirement in the Proposed Rule that NPS provide public comment, rulemaking or additional NEPA review before closing a GGNRA unit.

This is inconsistent with 36 C.F.R. § 1.5(b), which requires that a "closure, designation, use work activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area..., require a long-term or significant modification in the resource management objectives of the unit, or is of a highly significant nature, shall be published as rulemaking in the Federal Register." Consistent with this regulation, the NPS conceded repeatedly in the DSEIS that any long-term closure subsequent to the Dog Management Plan process would require formal rulemaking and NEPA review. DSEIS pp. 66 ("A long-term closure is typically longer than one year in length, and would likely require a special regulation."), 67 (noting that "a permanent closure may require a special regulation"), and 68 (unlike short-term closures to protect natural resources, "[m]ajor changes will continue to require a public process").

¹⁴ Agencies are required to provide an additional round of public comment (1) if there are modifications between a proposed and final rule that do not constitute a "logical outgrowth" of the initial proposal and (2) additional notice and comment would provide commenters with "their first occasion to offer new and different criticisms which the agency might find convincing." *Ass'n of Battery Recyclers, Inc. v. US Env'tl. Prot. Agency*, 208 F.3d 1047 (D.C. Cir. 2000).

NPS has not explained why the closures and additional restrictions contemplated by the Proposed Rule do not trigger additional rulemaking. Dog management is a context in which closures and activity restrictions have previously triggered notice, comment, and rulemaking pursuant to 36 C.F.R. § 1.5(b). See also *United States v. Barley*, 405 F. Supp. 2d 1121 (N.D. Cal. 2005) (affirming the dismissal of tickets issued to dog walkers in areas of the GGNRA that the NPS closed to dogs without following the notice and comment procedures of 36 C.F.R. § 1.5(b) because such closure was a “significant alteration in the public use pattern of the park area” and because it was of a “highly controversial nature”). Here, the vague and undefined proposal to close sites in the future to this important recreational use cannot meet these requirements.

The NPS should modify the Proposed Rule to provide the same procedural protections to dog walkers as it does for other activities or, in the alternative, explain its legal basis for why significant closures and restrictions on dog walking activities deserve treatment different than other forms of recreation.

2. *The Proposed Rule departs from NPS’s ordinary management regime.*

In addition to the procedural deviation, the Proposed Rule also departs from the substantive provisions of 36 C.F.R. § 1.5 in two respects. First, it authorizes the NPS to close GGNRA units for reasons other than resource protection, public safety, and the avoidance of visitor conflicts (the acceptable bases as set forth in § 1.5), such as special events, “implementation of management responsibilities,” infrastructure projects, or “other factors within the discretion of the superintendent.”¹⁵ Second, the general regulation allows the relaxation of restrictions, while the Proposed Rule only provides for “additional closures or restrictions.”

The NPS has not provided any rationale for such significant departures from its normal practice and existing regulations. The NPS should reexamine the Proposed Rule and either conform it to its ordinary practices or provide an explanation for the significant differences between the Proposed Rule and its general regulations on how to manage the GGNRA.

3. *The Proposed Rule’s provision on additional closures or restrictions precludes implementation of the “Monitoring-based Management Strategy” described in the DSEIS.*

CFDG does not support the “Monitoring-based Management Strategy” described in the DSEIS, but nonetheless is compelled to point out that the Proposed Rule is not consistent with the DSEIS’s description of the “Monitoring-based Management Strategy.” DSEIS, pp. 63–67.

¹⁵ Proposed Rule at p. 38 (§ 7.97(d)(11)).

The preamble to the Proposed Rule suggests that, if compliance falls below an “acceptable level,” NPS will explore primary management alternatives such as “increased outreach and education; increased area-focused enforcement of regulations; proposed fine increases; additional fencing, barriers or separations; or special use permit restrictions” (Proposed Rule, p. 18). If primary alternatives fail, NPS would take secondary management actions such as “short or long term closure of some areas to dog walking, additional use restrictions, or increased buffer zones.” The DSEIS includes similar language, but references a few additional primary alternatives (e.g., time/use restrictions, public meetings, and special use permit restrictions). DSEIS, pp. 65–66.

The language of the Proposed Rule, however, does not reflect the use of primary and secondary management alternatives, and makes no reference to primary management alternatives, instead simply referring to additional closures and restrictions. This omission is troubling for the additional reason that it signals that the NPS has not engaged in a rulemaking which in fact codifies its proposed plan as described in the DSEIS.

As explained above, CFDG requests adoption of a modified Alternative A. However, should the NPS proceed with this rulemaking, it must modify the Proposed Rule to match the Preferred Alternative in the DSEIS (which would require an additional round of public comment), or in the alternative, explain the basis for the modifications. In addition, the NPS must (under the circumstances presented here) provide supplemental NEPA review to support the Proposed Rule’s abandonment of the “Monitoring-based Management Strategy.”

4. *The NPS should modify the “Monitoring-Based Management Strategy” to incorporate core elements of the Green Tag Program.*

CFDG generally supports the use of adaptive management as a conceptual matter (which it has been requesting for years),¹⁶ but has serious concerns with the version of the plan described in the DSEIS (the “Monitoring-based Management Strategy”) because it lacks clarity and has no guideposts for implementation.¹⁷ NPS has not revised its strategy to address CFDG’s comments, and therefore the “Monitoring-based Management Strategy” continues to include the same defects. While CFDG believes that the NPS’s departure from the DSEIS is arbitrary and capricious, revising the Proposed Rule to closely reflect the “Monitoring-based Management Strategy” from DSEIS would not actually fix the problem. A different approach is needed.

¹⁶ See, e.g., Comment on the Draft Environmental Impact Statement (May 27, 2011), Appendix A, pp. 6–17 (providing an extensive summary of how the NPS could and should use adaptive management in the GGNRA) (provided as **Appendix A** to this letter).

¹⁷ Comment on the Draft Supplemental Environmental Impact Statement (Feb. 18, 2014).

Instead of ratcheting closures of areas open to dog walking within the GGNRA units, NPS should establish a Green Tag Program (as in Boulder, Colorado) in which dog walkers would qualify for a Green Tag by participating in an instructional class and agreeing to abide by the Green Tag Program voice and sight rules. Unlike the Proposed Rule, all the dog walkers in the GGNRA would have the skills and training to comply with the voice and sight control rules.

Under the current version of the Proposed Rule, only dog walkers with four to six dogs would be required to undergo training, but closure would be based on the compliance of all dog walkers, not only those with four to six dogs and a permit. Incorporating the Green Tag Program's registration requirement would provide individual dog walkers with the education and incentive necessary to comply, and make it possible for the NPS to tailor the restrictions to the dog walkers who repeatedly fail to comply with the rules. Dog walkers who obey the rules would be allowed to continue recreating in the GGNRA. Repeat offenders could undergo additional education to regain recreation access. This would be a more effective approach to addressing user conflict by targeting bad actors in a focused way, while preserving recreational access than the Proposed Rule for the vast majority of users who do not present enforcement issues.

The following additional components of the Green Tag Program should be included in a modified adaptive management program:

1. Require dog walkers to register with the NPS and provide proof of completion of dog training courses;
2. Allow the issuance of a citation only if the dog owner has received a written warning (by personal delivery or first class mail) within the twelve months prior to the behavior triggering the citation; and
3. Specify that when a court is reviewing a citation and considering a plea agreement, it may impose conditions such as additional training, evaluation or training of the dog to ensure it is capable of complying with the requirements, and temporary suspension or permanent revocation of the voice and sight control privileges.

CFDG requests that the NPS revise the Proposed Rule to allow for inclusion of these elements of the Green Tag Program in a revised adaptive management program.

5. *Adaptive management provisions in the Proposed Rule should comply with applicable guidance on adaptive management.*

To the extent that the NPS intends to implement an adaptive management program, the Proposed Rule is inconsistent with the U.S. Department of Interior's ("USDO") own

guidance documents¹⁸ because it fails to incorporate necessary elements of such a program. For instance, adaptive management should involve “the clear statement of objectives, the identification of management alternatives, predictions of management consequences, recognition of uncertainties, monitoring of resource responses, and learning.” USDO, “Adaptive Management Applications Guide” (2012), p. 11. More specifically, the Proposed Rule is missing the following elements:

- Standards for monitoring impacts as a trigger for additional management actions – The objectives in an adaptive management program should be “unambiguous, with specific metrics and specific target conditions,” contain “elements that can be readily measured” and include “resource endpoints and/or conditions representing their achievement.” USDO, “Adaptive Management Technical Guide” (2009), p. 24. Management alternatives should respond to impacts to the resources being managed, not compliance rates: “A monitoring plan should be designed to estimate system state and other attributes needed for decision making and evaluation.” *Id.* at 32. “[D]ecision making . . . involves the selection of an appropriate management at each point in time, given the status of the resources being managed at that time.” *Id.* at 26.
 - Instead, the current version of rule grants the NPS unfettered discretion as to how, when, and in response to what metrics it will act.
- Range of management alternatives – “If [the range of] management options fail to span a reasonable range of management activities or fail to produce recognizable and distinct patterns in system responses, adaptive management will be unable to produce effective and informative management strategies.” *Id.* at 26.
 - The Proposed Rule allows only for temporary or permanent closure, not the primary and secondary management strategies described in the preamble and the DSEIS. The current phrasing also limits opportunities for future partnership and investment by the dog community in existing units, San Mateo County units, and future units of the GGNRA.
- Mechanism for stakeholder engagement – “To ensure clarity and transparency it is important to make the management options explicit Ambiguity as to the alternatives under consideration can lead to conflict among stakeholders and the possibility of legal challenges to the decision making process.” *Id.* at 28.
 - CFDG has long called for a “recreation roundtable” to give recreational stakeholders a forum for discussion and resolution of potential use conflicts. This roundtable should be incorporated here, consistent with USDO guidance.
 - As noted above, the range of management alternatives is currently unclear. Also, although there is language in FAQs that the NPS “will involve the public in developing and implementing the Monitoring and Management Program, through workshops and recurring meetings with the public,” the Proposed Rule does not

¹⁸ USDO, “Adaptive Management Applications Guide” (2012); USDO, “Adaptive Management Technical Guide” (2009).

require the NPS to solicit such comment and indeed does not leave the NPS with much latitude for developing an effective Monitoring and Management Program. Nor does the Proposed Rule reflect any commitment to ongoing public involvement, such as the establishment of an advisory group or oversight council that would review issues related to enforcement and maintenance and provide input to the Superintendent of the GGNRA on how best to address them.

To the extent the NPS declines to incorporate the core elements of the Green Tag Program, the NPS should reconsider the structure of the provision on additional closures or restrictions in the Proposed Rule, revise the Proposed Rule to include an adaptive management program, and solicit additional public comment.¹⁹ Whatever the new proposal may be, the NPS must vet it through public comment.

C. Potential Elimination of commercial dog walking

The Proposed Rule solicits comment on ***whether or not*** commercial dog walkers (“CDWs”) should be allowed in the GGNRA, thereby leaving open the possibility of an elimination of this important activity on GGNRA lands (Proposed Rule, p. 3) (“The [NPS] invites comments on... ***whether commercial dog walking should be allowed under the proposed rule.***”). At no point during EIS development has the NPS introduced this idea, which is inconsistent with the DEIS, the DSEIS, the current interim CDW permitting program, and all prior NPS communications related to dog management in the GGNRA. There is no evidence that the current CDW program is ineffective – our understanding is that compliance rates are high – and therefore no apparent basis for eliminating CDWs from the GGNRA altogether.

CFDG strongly supports allowing CDWs in the GGNRA. The use of commercial dog walkers is an important element of urban quality for the residents of San Francisco, Marin, and San Mateo counties that should be protected. The average working person who owns a dog relies on a CDW to exercise their dog on a daily basis. In this way, CDWs form the basis of enabling dog recreation in the three counties. Disallowing CDWs from the GGNRA would unduly restrict dog recreation by limiting CDWs' reasonable and regulated access to this important and large area of public land. CFDG continues to advocate for the modified “No Action” alternative in the DSEIS (as described above), but in the alternative, the NPS should incorporate the existing interim CDW permit requirement regulations into the Proposed Rule, solicit additional public comment on a modified version of that program, and provide information and/or explanations sufficient to document a rational basis for the NPS's decision with respect to CDWs.

¹⁹ Please see Appendix A, the summary of CFDG's proposed solutions for adaptive management in our May 27, 2011 letter.

V. **The language of the Proposed Rule presents enforcement issues that will prove unworkable.**

CFDG's primary concerns with the language of the Proposed Rule are that (1) it is ambiguous in scope and (2) it gives unidentified "authorized persons" unfettered discretion to issue citations for a wide range of situations based on inadequately defined compliance standards. This is not necessarily a surprise, however, as the NPS did not consult with the Marin Humane Society or other groups with expertise, including CFDG, in developing operative definitions relating to dog behavior and management. Going forward, CFDG will be happy to work with the NPS to develop revised definitions.

A. **The NPS's failure to define "dog walking" raises questions about the Proposed Rule's scope.**

The Proposed Rule fails to define the term which triggers its application: "dog walking". The scope of the Proposed Rule is initially described as those "persons with dogs," but all subsequent references in the rule are to "dog walkers" and "dog walking." Neither of the latter terms is defined in the Proposed Rule. This leaves ambiguity and confusion with respect to the conditions under which dog owners can engage in all of the other activities that they do with their dogs -- other than walking -- in the GGNRA. This includes picnicking, sunbathing, water sports (e.g., swimming, paddle boarding), fetch (i.e., where the human is not walking), dog training activities (e.g., using features such as stumps and boulders to teach a dog commands and tricks), and even yoga. Under the plain terms of the Proposed Rule, none of these activities are regulated or restricted, because they are not "dog walking."

For some of these activities, it is impracticable to hold a dog on a 6-foot leash. For instance, it would be impossible to swim or paddleboard and hold onto a dog leash at the same time, but at Muir Beach, the leash requirement appears to extend into the water. Therefore, it is impossible to discern based on the language of the current rule what activities the NPS contemplates as subject to regulation.

CFDG suggests that the NPS define the scope of the Proposed Rule to give the public adequate notice of the restrictions anticipated for the GGNRA. For this reason alone, the Proposed Rule is legally insufficient because it fails to provide the regulated community with sufficient notice of which activities are in fact subject to regulation. Given the fundamental role of this definition in the Proposed Rule – it provides the basis for regulatory jurisdiction – CFDG requests that once it has drafted a reasonably specific definition of the regulated activity, the NPS must solicit additional public comment on this point.

B. The definition of “uncontrolled dog” is overbroad, unsupported by evidence in the record, and unrealistic.

The definition of “uncontrolled dog” is overbroad and vague because it encompasses “any behavior that threatens, disturbs, harasses... another person, dog, or domesticated animal or wildlife in a manner that a reasonable person would find threatening, disturbing, [or] harassing....” (Proposed Rule at 27.) These generalities are insufficient and do not provide meaningful guidance to recreational users or enforcement personnel.

The City of Boulder in contrast has defined “Voice and Sight Control” as the ability of a dog’s guardian to prevent the dog from engaging in the following behaviors: “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.”²⁰ Under this definition, unlike the Proposed Rule, dog walkers are monitoring their dog for signs of aggressive behavior that disturbs or harasses other people, rather than whether other people find “any behavior” to be “disturbing.”

The Proposed Rule’s definition of “uncontrolled dog” on its face would allow the NPS to prosecute a dog simply for being a dog in the GGNRA. While the Proposed Rule includes a list of possible behaviors, it is unclear how the NPS would distinguish between normal play behavior between friendly dogs (which can include chasing, and low- to moderate-volume howling and barking) from behavior that threatens, disturbs, harasses, or demonstrates aggression. The definition of “uncontrolled dog” therefore would prohibit exactly what is allowed in the Voice and Sight Control Areas, i.e., off-leash play. If the NPS seeks additional clarity to define this term, it should do so by reference to the Green Tag Program to avoid provisions that are overly broad and therefore unenforceable.

This definition is also overly broad and unsupported by evidence in the record. For instance, the DSEIS documents the lack of research and data on impacts to soil from dogs in the GGNRA or elsewhere. (DSEIS, p. 27) Therefore, it does not appear there is any rational basis for the NPS to prohibit “digging into ground” per se as the behavior of an “uncontrolled dog.” (Proposed Rule at 27). Notably, the General Management Plan does not prohibit the construction of sand castles, which one would expect to have similar environmental impacts.

The preamble to the Proposed Rule advises dog walkers “to ask another person (with or without a dog) whether it is acceptable for their dog to approach the other person or that person’s dog” and notes that “[c]ontact by a dog that results in uninvited or unwanted physical contact would violate the Proposed Rule.” (Proposed Rule, p. 16). CFDG has

²⁰ https://www-static.bouldercolorado.gov/docs/Voice_Sight_Tag_Brochure-2015-1-201405191643.pdf.

serious practical concerns with this notion. First, this recommendation is likely more reasonable on trails and in confined spaces rather than in Voice and Sight Control Areas and beaches, where a dog walker might have to run next to the dog shouting at everyone in the vicinity. This accumulation of noise may well pose a greater disturbance to peace and tranquility than anything that an off-leash dog could do.

Second, there is no recognition in the rule that sometimes a human is the instigator that provokes a dog; at times, a human is the one to approach someone else's dog without asking permission and trigger a response (e.g., barking) from a dog that is disabled or otherwise afraid of the person based on their conduct (e.g., a person who approaches suddenly from behind, reaches out to touch the dog on a part of its body that is injured or sensitive, makes loud noises, etc.).

CFDG requests that the NPS modify the definition of "uncontrolled dog" in the Proposed Rule to include qualifiers such as "without provocation" or provide an affirmative defense. For instance, the Boulder Colorado Municipal Code provides a set of specific defenses where a person feels threatened by an animal if such person is attacking or intentionally provoking the animal, attempting to assault another person, or attempting to aid the animal when it was injured. Boulder Colorado Municipal Code, Section 6-1-20(b). The Proposed Rule instead unreasonably places all responsibility for user conflict on dog walkers and dogs.

C. The failure to define "Authorized Person" leaves serious concern as to how NPS will exercise its enforcement discretion.

The Proposed Rule gives no information on who may constitute an "authorized person" that has the authority to determine whether a dog is under "voice and sight control" (Proposed Rule, p. 28) and instruct dog walkers to remove uncontrolled dogs from the GGNRA (Proposed Rule, p. 37). General NPS regulations define "authorized person" to include "an employee or agent of the [NPS] with delegated authority to enforce the provisions of [36 C.F.R. Part 1]." 36 C.F.R. § 1.4(a). There is no analogous definition in 36 C.F.R. Part 7, where NPS special regulations are published, and indeed the term appears only twice, both times in contexts involving minimal discretion. See, e.g., 36 C.F.R. §§ 7.58(c)(3) (where "authorized persons" inspect vehicles to make sure they have fewer than two axles and carry necessary safety gear) and 7.75(a)(i) (where "authorized persons" can request that the operator of an off-highway vehicle show a driver's license or learner's permit).

NPS Rangers are not normally trained as animal control officers, which raises questions about how the NPS will enforce the Proposed Rule particularly given the ambiguities described in this letter. If the "authorized person" is an agent of the NPS rather than an employee, will the NPS hire based on whether the person is trained as a dog behaviorist? If not, what kind of training would that person (or NPS ranger) receive before the Dog

Management Rule is implemented? Will the training sessions be conducted by a dog behaviorist who can help the “authorized persons” distinguish between dog play and behaviors that are undesirable? The Proposed Rule should define the education and training requirements for the individuals who will enforce the Proposed Rule in the GGNRA, as enforcement of the Dog Management Plan will be a task that is far from ministerial.

D. The definition of “unattended dog” raises practical concerns for dog walkers.

The prohibition of “unattended dogs” tied up outside buildings or confined in cars (Proposed Rule, p. 27, 36), combined with the prohibition against dogs entering buildings (Proposed Rule, p. 35), in practice means that dog owners will not have access to bathrooms anywhere in the GGNRA. This restriction presents a significant and real impediment to everyday use of the GGNRA. Without reasonable access to restrooms, many visitors will be prevented from visiting the GGNRA altogether. The Proposed Rule marks a significant departure from past practice. Indeed, the sole purpose of the rings on the Crissy Field rinse station is to provide a place for dog owners to tie up their dogs, e.g., while they use the restroom facilities. CFDG requests that the NPS clarify the Proposed Rule to allow dog owners to use the bathrooms and comply with the Proposed Rule.

There are also situations when an unattended dog may not present any risk of environmental impact, user conflict, or harm to the dog. Most dogs can spend at least some period of time in a car without experiencing suffering due to heat, direct sunlight, or lack of ventilation. San Francisco in particular is known for its temperate climate. Most states only outlaw pets being left alone in cars when temperatures are “extreme”²¹ and experts generally warn against risks to pet safety at temperatures above 60 degrees.²² The Proposed Rule is thus overly broad and regulates behavior without any stated rational basis in the administrative record.

In addition, many dogs are also capable of waiting in a car, or tied outside, or otherwise without a guardian without creating a nuisance, disturbing wildlife, or disturbing the peace and tranquility of the GGNRA. The NPS should revise the Proposed Rule to treat an “unattended dog” as a violation of the Proposed Rule only if there is conduct that (from the perspective of a reasonable person) objectively results in a public nuisance or disturbs wildlife or the tranquility of the GGNRA.

E. The Proposed Rule’s leash requirement is more stringent than necessary and therefore an arbitrary overreach of regulatory authority.

Specifying that “a leash must be attached... and simultaneously held by the dog walker” unless the dog is “fully confined in a vehicle” appears to suggest that a dog cannot have any

²¹ <http://www.gopetfriendlyblog.com/is-it-illegal-to-leave-your-pet-alone-in-the-car/>

²² http://www.paw-rescue.org/PAW/PETTIPS/DogTip_HotCars.php

part of its head out the window of a vehicle without violating the Proposed Rule. Here again, the rule is both vague and overbroad. CFDG would suggest language similar to the relevant Boulder, Colorado, ordinance which includes the additional qualifier “without access to passersby.” Boulder Colorado Municipal Code, Section 6-1-16(a)(2).

F. The text of the Proposed Rule, the accompanying maps, and the Preferred Alternative do not match, which is likely to introduce confusion

The maps that accompany the rule do not match the tables that describe where dog access will be allowed and under what conditions. See **Appendix B**.

The NPS’s decision to “correct and update” the names of trails and fire roads made it particularly difficult to track the many ways in which the Proposed Rule departed from the Preferred Alternative. We note in the Fact Sheet that NPS affirms it will make no operational changes in the roads as a result of the Dog Management Rule. Fire roads in particular are generally about 15 feet wide to allow vehicular access for fire suppression purposes. We interpret the Fact Sheet as NPS assurance that there will be no physical changes in the width, use or maintenance of the fire roads (now called trails) that may have health and safety impacts (e.g., eliminating fire suppression capabilities). Before NPS may lawfully change the authorized use of these “trails” in the future, NPS must supplement its NEPA analysis, articulate the basis for the change, and solicit additional public input.

The Proposed Rule is also unclear with respect to the status of future planned trails that NPS designated as open to dog walking in the DSEIS. For instance, the map accompanying the Proposed Rule for the Fort Baker unit (Map #8) does not depict a future planned trail as described in DSEIS Map 8-F. In addition, there is no Proposed Rule map for the Pedro Point unit. Given that DSEIS Map 20-F identifies a future trail with on-leash dog walking access in the Pedro Point unit, it would be clearer to provide a Proposed Rule map with markings similar to the Proposed Rule map for Milagra Ridge (Map #18), which includes a trail that is under construction.

VI. **The Proposed Rule violates the NPS’s management policies and the GGNRA’s enabling legislation.**

Both the NPS Organic Act and the NPS’s own management policies require the NPS to protect recreation as a core value. The NPS Organic Act (16 U.S.C. § 1) directs the NPS to conserve natural resources but also directs the NPS not to exercise its authority “in derogation of the values and purposes for which [the NPS units] have been established.” 16 U.S.C. § 1a-1. The NPS Management Policies (2006), which courts treat as equivalent to a

regulation,²³ provide similar guidance. Section 1.4.3 establishes the fundamental purpose of the National Park system as conservation of “park resources and values” which is defined by Section 1.4.6 to include “appropriate opportunities to experience enjoyment of the [natural, historic, cultural, and wildlife] resources... and any additional attributes encompassed by the specific values and purposes for which the Park was established.”

The enabling act for the GGNRA establishes that the purposes of the GGNRA are “public use and enjoyment” and “the maintenance of needed recreational open space necessary to urban environments and planning.” Pub. L. No. 92-589 (Oct. 27, 1972). Accordingly, the GGNRA enabling act directs the NPS to “preserve the recreation area, as far as possible, in its natural setting, and protected from development and uses which would destroy the scenic beauty and natural character of the area.” *Id.* The legislative history for the GGNRA enabling act specifically references dog walking. H.R. REP. 92-1391, 92ND Cong., 2ND Sess. 1972, 1972 U.S.C.C.A.N. 4850, 4852 (Sept. 12, 1972). Therefore, any management actions that limit dog-related recreation should be subject to a non-impairment analysis to demonstrate that recreation has not been impaired by the proposed Dog Management Plan. Notably, no such analysis was conducted for the GMP (as described above). Without such an analysis on the DMP (in addition to the GMP), the NPS cannot finalize the Dog Management Rule and comply with its statutory obligations to protect recreation.

VII. Finally, as previously described, CFDG has concerns with the NPS’s failure to comply with NEPA.

CFDG hereby incorporates its previous comment letters on the NPS’s compliance with NEPA by reference.²⁴ CFDG understands that the NPS does not intend to accept NEPA comments on this draft rule, however, in this context, given the magnitude and number of unaddressed issues in the NEPA review, CFDG believes that a failure to consider and correct NEPA issues at this time constitutes an abuse of discretion.

²³ *Southern Utah Wilderness Alliance v. National Park Service*, 387 F. Supp. 2d 1178 (D. Utah 2005) (“The Management Policies...are not a general statement of policy, but prescribe substantive rules.”).

²⁴ Comment on Draft Environmental Impact Statement/Draft Dog Management Plan (May 27, 2011); Comment on Draft General Management Plan/Draft Environmental Impact Statement (December 9, 2011); Supplemental Comment on Draft Dog Management Plan/Supplemental Environmental Impact Statement (April 11, 2014); Supplemental Comment on Draft Dog Management Plan/Supplemental Environmental Impact Statement (May 20, 2014).

We have pointed out the deficiencies in the most recent EIS for the Dog Management Plan and requested supplementation with respect to:

1. Dispersion into city parks and neighborhoods as an indirect, induced impact of the NPS's decision to significantly restrict off-leash dog access within the GGNRA;²⁵
2. Failure to consider urban quality as required by *Trinity Episcopal School Corp. v. Romney*, 523 F.2d 88, 93-94 (2d Cir. 1975), which notes that NEPA "must be construed to include protection of the quality of life of city residents";
3. The inaccurate description of the environmental baseline with respect to GGNRA units in San Mateo County; and
4. Failure to analyze impacts to recreation as an environmental resource.

CFDG has also submitted comments in this process showing that the NPS predetermined the outcome of the Dog Management Plan and Proposed Rule.²⁶ For instance, the GMP categorized nearly all of the GGNRA as "natural management zones." Dog walking is only allowed in "diverse opportunities zones." (GMP, pp. I:133, I:199) The GMP only allows for "minor" changes (GMP, p. I:34), so the DMP and Dog Management Rule have effectively been decided since issuance of the GMP on April 30, 2014. The NPS also took interim action with respect to CDWs in the GGNRA by limiting the number of dogs per commercial dog walker and requiring permits, and predetermining this element of the plan. Both of these actions violate NEPA's prohibition on taking actions prior to completion of the NEPA process. 40 C.F.R. § 1506.1(a)(1), (2).

Finally, given the lack of meaningful analysis on dispersion in the DSEIS, the NPS must consider all individual comments submitted in connection with the Proposed Rule to the extent they implicate dispersion issues. Wherever an individual has stated in a comment on the Proposed Rule that they will be forced to travel to another area of the GGNRA, the NPS must consider whether this new information was within the scope of the previous (inadequate) dispersion analysis. However, the required impact analysis is not limited to traffic alone – other impacts must be considered as well where dispersion is implicated. Please see CFDG's analysis on this point attached hereto.²⁷

²⁵ The Board of Supervisors for Marin, San Francisco, and San Mateo counties have all voiced concerns regarding the impacts of dispersion on off-leash dog areas outside the GGNRA and the NPS's failure to analyze such impacts, as have the Superintendent of the City of San Francisco and (most recently) the City of Mill Valley. See, e.g., http://www.marinscope.com/mill_valley_herald/news/mill-valley-joins-battle-against-ggnra-dog-rules/article_9f8e186e-1df0-11e6-9e8e-db64c5ec2445.html.

²⁶ Comment on Final General Management Plan/Environmental Impact Statement (May 20, 2014).

²⁷ See **Appendix C** (a summary of the NPS's failure to analyze dispersion issues from CFDG's May 20, 2014 comment letter).

VIII. Conclusion

The APA requires that agencies issue rules with a “rational basis” and “in accordance with law.” 5 U.S.C. § 706(2)(A), (D). For all the reasons discussed in this letter, CFDG is concerned that this rule will be vulnerable to litigation. The NPS needs to address CFDG’s concerns and re-issue a revised rule that addresses the issues identified in this letter. Given the complexity and controversial nature of the issues involved, the NPS should allow at least ninety days for public comment on the revised proposal. We look forward to working with the NPS on the development of an appropriate, inclusive dog management rule that adequately protects recreation as a core value of the GGNRA.

Very truly yours,



Marie Quasius

cc: Martha Walters, CFDG
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
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GGNRA Superintendent Chris Lehnertz
San Francisco Mayor Ed Lee
San Francisco Supervisor Scott Wiener
San Francisco Supervisor Katy Tang
Marin County Supervisor Kate Sears
Marin County Supervisor Judy Arnold
San Mateo County Supervisor Don Horsely
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Nancy McKenny, CEO, Marin Humane Society

Enclosures