

May 24, 2011

Mr. Frank Dean
General Superintendent
Golden Gate National Recreation Area (GGNRA)
Building 201, Fort Mason
San Francisco, CA 94123-0022

Re: Draft Dog Management Plan/Draft Environmental Impact Statement Comments

Dear Superintendent Dean:

We represent the Crissy Field Dog Group and are submitting these comments on its behalf. CFDG and Eco-Dog are also submitting comment letters, and the comments in this letter are meant to support and supplement those comments.

Introduction

Some of the comments identify deficiencies in the draft Plan and draft EIS (Draft Plan/DEIS), which our client believes is currently inadequate. We emphasize that the purpose of these comments is not to criticize, but is to improve the proposed plan and to improve the environmental analysis that assists you in developing and making a decision on the plan.

We want dog management in GGNRA to be successful at preserving recreation and the natural, scenic and cultural values of the Recreation Area, without impairment, for current and future generations. We appreciate your stated objective to accomplish this goal too.

These comments pertain to both the draft Plan and draft EIS, which is an integrated document. Where appropriate, based on the comment, the proposed plan should be improved and/or the environmental analysis should be improved to enable an informed decision on the plan.

As you will see, this is not a typical attorney comment letter that takes issue with a statement on page x, requests you to revise section y, or presents a broadside against the draft. We could have written such a letter, but we believe you will likely receive hundred or thousands of such comments from groups and individuals. Instead, we would like to try to start a dialogue on how the plan could be improved.

This is especially the case because, for reasons apparent from the background noted at the end of this letter, we do not know whether there will be a meaningful opportunity for dialogue. We request and hope that at a minimum, those seeking constructive solutions such as our client will be afforded that opportunity.

Polarizing Alternatives vs Integrated Alternative

The draft Plan/DEIS does not seem to recognize that environmental values include both recreation and nature. In many places, the document treats these as opposites – that recreation only harms natural resources.

This bias is initially shown in the purpose and need statement on the very first page, which does not include “recreation” as one of the resources to be preserved and maintained in the Recreation Area, while including natural, scenic and cultural resources – despite the fact that all four are core resources specified by Congress in GGNRA’s enabling legislation (acknowledged on page 36). This fundamental omission is relevant because, under NEPA, the purpose and need statement is the basis for developing and evaluating alternatives.

This bias is further reflected in the way the alternatives are developed, described and evaluated. For example, the alternatives are classified as ones that maximize dog use or maximize environmental preservation, instead of alternatives that promote *both* dog walking and natural conservation. Although it is possible to mix-and-match components of different alternatives – or more specifically to use Alternatives A or C as the framework to produce a balanced plan, as discussed later in this letter – this polarizing approach has two significant problems, which can be addressed.

1. First, the approach inhibits the development of solutions – whether plan elements or mitigation measures – that are designed to preserve recreational *and* natural resources and values. Mixing and matching flawed components is not the same as developing creative, integrated solutions. We ask you to take a fresh look at this and not be deterred or bound by the prodigious effort that went into producing a 2,400 page draft Plan/DEIS (see additional explanation and suggestion below).

2. The polarized approach tends to polarize stakeholders as well, which in turn puts senior agency officials and legislators, who ultimately must fund the plan, in a difficult position. These participants feel they must choose between protecting natural areas and preserving recreation – two of the core needs and values of the human environment and of GGRNA’s mission.

There are many examples in sound environment and land planning principles demonstrating that separation of uses and exclusive uses have negative environmental consequences. In contrast, multiple use approaches and multi-species approaches often strengthen urban vitality and restoration of natural resources. This includes people, as humans are a keystone species in this ecosystem. The draft Plan/EIS lacks the development

of this type of alternative, whether as an alternative course of action, an element in an existing alternative, or mitigation measures.

For example, there are areas – several of which were mentioned by citizens at the public meetings held on the draft Plan/DEIS – where trails could be designed to accomplish both native plant restoration and appropriate access to avoid potential conflicts between dog walkers and other visitors. The absence of truly integrated alternatives and a predominant focus on either allowing or prohibiting access reflects the lack of serious exploration of alternatives that involve conflicts concerning uses of available resources (as required by Section 102(2)(E) of NEPA) with a systematic interdisciplinary approach using the natural and social sciences and the environmental design arts (as required by Section 102(2)(A) of NEPA). E.g., 40 CFR 1500.2; National Park Service (NPS) Director’s Order DO-12 (DO-12) Secs. 4.4 and 4.11; Department of the Interior (DOI) NEPA Handbook/NPS Handbook for Environmental Impact Analysis (DO-12 Handbook) Secs. 1.4.H-I.

More important than compliance with NEPA, however, the lack of these approaches stands in the way of developing a more balanced plan.

We ask NPS/GGNRA to identify some key areas of where public comments indicate a strong interest in preserving or providing dog walking access or where comments indicate conflicts or controversy that might be solved with good environmental design allowing multiple uses in the zone or area – and to commission a design charrette with a qualified professionals. Budget will understandably be a concern, which is why we suggest a focused approach for some key areas. Regardless, the agency has an obligation to take a “hard look” at alternatives that could resolve resource conflicts, and difficulty of compliance is not an excuse under NEPA. Better solutions will likely reduce costs, whether for defending against legal challenges to the plan or lowering operating costs for enforcement.

Compliance-Based Approach

The bias that recreation is not an environmental value but only an adverse environmental impact also misses the fact that people care about both of these resources and values, and that people with dogs can be – and most of are – good stewards of our environment.

The proposed plan has the effect of punishing many people because a very small number may not be responsible visitors. The reasonable response is to educate visitors and help them to learn how to respect the environment, not to ban the all dog walkers from areas in GGNRA where they have traditionally had access or additional areas where access is reasonable.

The proposed “compliance-based” approach has potential to work, if it is improved to include education and an objective monitoring program designed and carried out with the community. GGNRA should use partnerships with community, animal protection, and conservation organizations to make this work. This could bring additional resources to

limited federal resources. GGNRA should be a partner with the San Francisco and other communities.

The compliance-based approach needs more development and definition, consistent with sound adaptive management approaches. E.g., CEQ Final Guidance on Mitigation and Monitoring (2011), Secs. II.A and II.D; DOI 522 DM1 and Adaptive Management Technical Manual (2008). Although some details of the program will necessarily be defined as it is being put in place, the essential structure and elements need to be part of the proposed Plan and discussed in the final Plan/EIS, at least at the level of detail as proposed by the Eco-Dog comments (incorporated by reference herein).

In the draft Plan/DEIS, the proposed compliance-based approach relies on compliance statistics as a 'surrogate' indicator of adverse environmental impact and unacceptable impairment of Recreation Area resources – namely, an overall percentage of compliance with rules based on observations of noncompliance. If that percentage falls below 75%, access becomes increasingly limited to the point of closure (secondary management response).

This may be a useful tool, but is not sufficient for a management response to close access altogether. A closure without actual impairment caused by dogs would reflect a bias and underlying motivation simply to get dog walking out of GGNRA. It would conflict with both GGNRA's enabling legislation and mission to preserve recreation and NPS's policies on evaluating impairment. To provide opportunity for public comment alone, before a secondary response or closure, would not provide the scientific or technical review needed to review impacts.

An adaptive management program that provides an impartial review available to the public, which is related to actual impacts and the integrity of the resources in the area in question, would provide the necessary basis for a decision on a secondary management response. As explained in the Eco-Dog comments, this should not require a new EIS or re-open the EIS process because it is implementing an impact-based adaptive management plan adopted as a mitigation measure in this EIS process.

Alternatives A and C

CFDG's preferred alternative is a variation on Alternative A, where some access to dog walking in some existing areas would be changed, and the elements common to all alternatives would apply to Alternative A.

The current GGNRA general management plan has policies that promote outreach and education about Recreation Area resources as well as clear rules and compliance. The No Action Alternative is a continuation of the existing management plan. The elements common to all alternatives, including clearer rules about regulated off leash areas (ROLAs)

and access, public outreach and education, and compliance-based adaptive management program could all properly be part of implementing the current general management plan.

Another approach would be to develop a more integrated version of Alternative C, as described above, that more closely resembles Alternative A. We can understand that GGNRA wants to convey to the public that it is “taking action” and that people misunderstand the No Action alternative as meaning “nothing is changing.”

CFDG agrees change is needed, but not change that substantially restricts dog walking, but change that provides clearer rules, better design (including better signage and physical barrier or cues), better outreach and education, and better partnerships with local governments and community groups.

The draft preferred Alternative C needs substantial work to be a balanced alternative, especially in light of the extremely small area (approximately 1%) within GGNRA where dog walking is allowed. We hope these comments, CFDG’s more detailed comments, Eco-Dog’s comments on a compliance-based adaptive management program, and the many excellent and practical public comments submitted will provide a basis for improving the proposed plan.

New Lands

As discussed in more detail in the CFDG comment letter, 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 site specific public land planning and NEPA process, that unacceptable impairment would occur (a process described in Chapter 1 and Appendix C of the draft Plan/DEIS). The unprecedented "Closed until open" proposal would violate GGNRA's obligation under its enabling legislation and management policies to preserve and maintain recreational uses, violate sound land planning with the community as required by NPS Management Policy, and violate NEPA by prejudging alternatives before site specific public and environmental review.

High Quality Information for Decisionmakers

NEPA’s purpose states that environmental information should be available to public officials and citizens before decisions are made and before actions are taken. It goes on to state: “The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 CFR 1500.1(b), 1502.6; DO-12 Handbook Secs. 1.4.G through I.

The draft EIS notes some studies and general tendencies of dogs to harm natural resources, but, with few exceptions, there is little documented site specific information that supports the specific bans on off leash dog walking areas. We can understand some well-supported changes – both some areas that should be more limited and some areas that should be

increased – but CFDG objects to broad new limitations without site specific scientific evidence that problems with the quality of GGNRA’s natural resources are actually attributable to dogs and not to other factors. Please see the detailed comments prepared by TetraTech, a well-respected firm of scientists and environmental professionals, appended to CFDG comments, for examples.

The draft EIS needs to provide full disclosure to the public and decisionmakers. If disturbances are having a significant negative effect on wildlife, for example, the draft EIS needs to take a hard look at whether people or other factors are also causing or contributing to the problem noted. If they are, GGNRA needs to be up front about whether people should also be restricted from these areas. For example, recent studies by NPS at other units of the national park system including Muir Woods National Monument demonstrate that noise from human activities may be a crucial factor (<http://www.nature.nps.gov/parkscience/index.cfm?ArticleID=346>; http://www.nytimes.com/2011/02/22/science/earth/22sound.html?_r=1). If so, the EIS needs to disclose accurately – not merely assume – the cause(s) of asserted impairment and the impacts of visitors, and the plan needs to disclose whether the Park Service proposes to exclude people from the areas where dog walking is excluded.

The science needs to be sound, and the consequences need to be fully and fairly disclosed. The plan and proposed new significant restrictions on access for dog walking should not be based on unsubstantiated assumptions. Where there is uncertainty, differing points of view should be disclosed.

Urban Quality and Recreation

The draft Plan/DEIS has another pervasive bias (which is related to the polarization of natural and recreational values discussed above). The draft document views GGNRA primarily in a natural context and not in the context of a major metropolitan area.

The omissions discussed below are relevant both for the EIS analysis and the proposed Plan. NEPA requires that an EIS study impacts on the “human environment,” that the significance of these impacts are based on their “context” and intensity, and that Plan alternatives be developed and evaluated in order to avoid or otherwise mitigate these impacts. E.g., 40 CFR 1508.14, 1508.27, 1502.1; DO-12 Sec. 4.3; DO-12 Handbook p. 4, Secs. 4.2.A,¹ 4.5.G.2.

¹ The DOI/NPA NEPA Handbook provides the following example of context: “For instance, the temporary closure of a 1,000 acre recreation area may have minor impacts on the nation’s recreation areas, but severe impacts on local residents who depend on the area as their sole source of outdoor recreation for many miles.” Though not identical (e.g., the proposed closures to recreational dog walking would have more severe impact because they would be permanent, not temporary), it would be hard to find a more relevant example to the type of analysis still needed in this EIS.

An example of this bias is in the description of the “General Project Setting” in Chapter 3, which makes passing reference to the City and County of San Francisco. Nearly the entire description is about natural resources (the Biosphere Reserve, California Floristic Province, etc.). The proximity to and use by adjacent urban neighborhoods and the interrelationship with those neighborhoods is not described sufficiently to understand the human environment and resources (including recreation) that may experience an impact, and to understand the effects of the alternatives. E.g., 40 CFR 1502.15; DO-12 Handbook 4.5.F.

Another serious example is the determination to *exclude* urban quality from the scope of the EIS. EISs are required to provide “full and fair discussion of significant environmental impacts” including “urban quality, historic and cultural resources, and the design of the built environment...” 40 CFR 1502.1 and 1502.16(g); DO-12 Handbook 4.5.F.2(d). GGNRA is located in an urban area and contributes directly and indirectly to its quality, and conversely, is directly and indirectly affected by this urban area. The legislative history of GGNRA could not be clearer about the purpose of the Recreation Area to serve the recreation needs of city dwellers (see CFDG comments, incorporated by reference herein, including the need for adequate recreation impact analysis). Further, the definition of “human environment” states: “When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.” 40 CFR 1508.14. The cumulative impact analysis in Volume 2 is a start, but does not provide this direct, indirect and cumulative impact analysis and apply it to refining the alternatives including mitigation measures.

During the public meetings held on the draft Plan/DEIS, and the City of San Francisco Board of Supervisors meeting attended by GGNRA staff – both much appreciated – numerous citizens spoke specifically and eloquently about the importance of GGNRA to urban quality and to the social fabric of their neighborhood and lives, as well as the community cohesiveness related to dog walkers who use the recreation area. These are impacts routinely examined by EISs in urban areas. The fact that GGNRA is also a special natural area does not exempt it from a detailed analysis of urban quality, which is at the core of GGNRA’s establishment and its environmental setting.

Urban design is relevant. The design of the built environment is not just about downtown architecture or plazas. The quality and design of open space and recreation areas – including their trails and the manner in which natural restoration and public access are integrated – are also fundamental to the quality of the human environment and urban quality. The bias toward treating GGNRA as a national park akin to a place like Yosemite, where the management principle is to minimize human intervention and allow natural processes to work unaffected by people if possible, is reflected in this summary dismissal of urban quality and urban design as irrelevant to one of the largest metropolitan parklands in the nation.

We are not suggesting diminishing respect for GGNRA's natural values or departing from the principles of management for units of the National Park System. On the contrary, as described earlier in these comments, good land planning and design would recognize the urban setting and character of this area and consider urban design in avoiding or reducing potential conflicts among GGNRA's core values, so they can all be preserved unimpaired for future generations.

Request for Dialogue and Consultation

At the outset of these comments, we requested the opportunity for continued, meaningful public participation during the EIS process. CFDG and Eco-Dog believe there are ways to preserve dog walking in most traditional areas and in other areas in GGNRA without degrading natural values.

We can support a preferred alternative based on a scientifically and technical sound analysis of the current baseline and the impacts attributable to dogs and not other factors, and on a technically-sound adaptive management program that focuses on compliance. We agree it makes sense in some areas to have separate trails or areas on and off leash, and with or without dogs.

As the new Superintendent, you may or may not be aware that – other than in the current official public comment period for which you should be commended – the National Park Service and GGNRA has not allowed any real opportunity in the course of this EIS process over the past 2 years (after unsuccessful negotiated rulemaking ended) to present ideas or to discuss the development of the plan and alternatives with GGNRA or NPS staff. The agency called these 2 years a “quiet period” which excluded public participation. While some reasonable period for an agency to do its homework is certainly appropriate, a 2 year hiatus resulting in a draft EIS is directly contrary to President Obama's policy of transparency and public participation in the NEPA process (Presidential Proclamation on the 40th Anniversary of NEPA (December 31, 2009) , CEQ guidance, and the Interior Department and Park Service's own directives to involve the public throughout the EIS process.

The fact that GGNRA tried, in a mediation process, to engage stakeholders should not substitute for or excuse the agency from engaging on the scope of the draft EIS with communities, groups or citizens who were excluded from that mediation process, or with participants who learned much from that process and had further constructive ideas.

This 2-year public blackout has been exceedingly frustrating to people of good will: (1) who made scoping comments when the Notice of Intent was issued five years ago in 2006; (2) who offered a wide range of reasonable alternatives to GGNRA in a compendium at the conclusion of the negotiated rulemaking process; and (3) who asked to provide additional alternatives and information to GGNRA in the past two years, such as CFDG – only to find that none of these appear to have been seriously considered in the draft

Plan/DEIS (see CFDG Appendix K), as required by DOI/NPS NEPA guidance. (e.g., DO-12 Handbook Secs. 4.3 and 4.12).

We mention this by way of background here; we think these concerns can be constructively addressed.

The inadequacy of a scoping process or of public involvement in the development of an EIS is not generally subject to court review, although the agency's overall approach in the NEPA process may be relevant and influence reviewing judges. But CFDG is less interested in challenges than in moving forward on a positive basis with good public involvement.

NEPA intentionally uses the phrase "consultation" and not just comment to reflect a two-way communication between the agency and interested entity. The NEPA rules and CEQ/DOI/NPS NEPA guidance also use the word "meaningful" involvement, which likewise refers to the ability of the agency to engage with interested people to understand their concerns or comments and explore solutions. The word "dialogue" means an exchange, not just a one-way communication. NEPA uses the term "explore," not in the narrow sense of a desktop review only, but what the agency would do to see if a better alternative can in reality occur. Better alternatives are, after all, what NEPA is about.

Both the City and County of San Francisco and we have requested a continuing dialogue and exchange of ideas in the coming months as you consider comments and work on the plan. Specifically:

1. Understanding comments. We note our suggestion made at the public meetings that you, along with staff most involved in developing the alternatives and mitigation measures, meet with interested groups not long after the end of the draft document comment period. The purpose of the meeting would be a real working session for GGNRA to understand the comments made, particularly on the draft Plan, where you can ask questions and understand what a written comment intended. It would not "extend" the public comment deadline or provide commenters with "another bite at the apple." A few sessions could be held with different perceived interests, such as dog walkers, environmental groups, neighborhood groups, and local government. The sessions could be public; we are not afraid of access by other stakeholders to you or others hearing what we intend by our comments on the draft Plan.
2. Update on alternatives. We support the idea you have expressed to San Francisco of having a document and public meeting in the fall to discuss the direction of or a refined proposed Plan.
3. Charette. We recommend and would welcome participation in a design charette on integrated solutions for selected zones or elements of the plan. This technique has been used by public agencies successfully on many projects.

4. Adaptive management. We request an opportunity to participate in a work session with you on the development of an improved compliance-based adaptive management program. This is a key element of any plan, and, as emphasized by CEQ in recent guidance on monitoring and mitigation, it is important for many reasons to develop the bulk of the program now – and the partnership commitments that are essential to its success – as part of the Plan/EIS/ROD, not after-the-fact. This is also important to develop the constituency for its funding, which may require creativity and public-private partnerships as well.

5. Public participation in the NEPA process. We would be glad to participate in a conversation between DOI/NPS/GGNRA and CEQ/EPA on other public involvement approaches that could be used as you further develop and refine the proposed plan. There are many options under NEPA that do not run afoul of the Federal Advisory Committee Act (FACA) or other laws.

Another extended blackout resulting in a final plan does not serve NEPA's purposes and mandates, NPS objectives for good planning, or the GGNRA's enabling legislation standard of sound land planning.

Thank you again for the opportunity to comment. Please do not hesitate to contact Martha Walters at (415) 256-9085 or me at (206) 623-7580 if you need more information or would like to discuss. Crissy Field Dog Group looks forward to working with you and your colleagues to improve the proposed dog management plan for the Golden Gate National Recreation Area.

Respectfully submitted,

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Attorneys for Crissy Field Dog Group

By



Kenneth S. Weiner

cc:

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