

September 16, 2019

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Laura Joss
Superintendent
Golden Gate National Recreation Area
Fort Mason, Building 201
San Francisco, CA 94123-1307

Re: **Changes to the 2019 Superintendent's Compendium for the GGNRA Concerning Dogs Are Unlawful and Should Be Rescinded Immediately**

Dear Superintendent Joss:

This firm represents Save Our Recreation, Marin County DOG, Coastside DOG of San Mateo County, and SFD OG. I am writing on behalf of those organizations to inform you that requirements and restrictions concerning dogs set forth in the 2019 Superintendent's Compendium for the GGNRA are unlawful and should be rescinded immediately. If this is not done, my clients will commence litigation seeking to set aside those changes from the 2017 Superintendent's Compendium based on multiple, sufficient independent grounds, as set forth below. Moreover, my clients will seek attorney fees pursuant to the Equal Access to Justice Act, as any refusal by the government to rescind the unlawful requirements and restrictions would not be substantially justified.

New Dog Access Restrictions

The 2019 Compendium imposes substantial new requirements for and restrictions on access for people with dogs in the GGNRA by amending parts of the 1979 Pet Policy and implementing parts of the Dog Management Plan, which was withdrawn in 2017. The 2019 Compendium works all of these significant and controversial changes without the GGNRA's having provided the required: notice and opportunity to comment, reasoned explanation for those changes, or National Environmental Policy Act (NEPA) review and analysis.

Locations: At least seven locations have new restrictions on dog walking access reflected in the 2019 Compendium's text and/or its Exhibits. The most egregious are:

- San Mateo County locations **Rancho Corral de Tierra, Milagra Ridge and Mori Point** each will have multiple trails and/or areas closed to on-leash dog walking that currently allow such access. For example, at Rancho Corral de Tierra people with dogs will lose

more than 3,000 acres of on-leash dog walking access. At Milagra Ridge, the map shows that people with dogs will no longer be able to access Milagra's trail system from the park site's southern entrance, among other access changes. (*Exhibits #37, #38, and #39 – note these Exhibits and major public access changes are inexplicably not mentioned in the Compendium or the Compendium's Table of Changes.*)

- **Fort Funston** in San Francisco will lose a portion of a public parking lot and space designated for off-leash dog walking to “administrative and operational” uses by NPS staff and park partners. (*Exhibit #29.*)
- **Ocean Beach** in San Francisco will require dogs to be on-leash in beach access stairwells that enter the off-leash beach area. (*Exhibit #31 - there was no mention of this change in the Compendium or the Compendium's Table of Changes.*)
- Marin County locations **Muir Beach, Rodeo Beach** and **Oakwood Valley** will have closures (some seasonal) in central parts of popular off-leash dog walking areas that cannot be fenced-off or easily avoided. (*Exhibits #22, #23A, #24.*)

Commercial Dog Walking: Commercial dog walking is explicitly prohibited in GGNRA areas in San Mateo County. While commercial dog walkers can get permits to walk at Marin and San Francisco sites, they are unable to get a permit to walk at San Mateo County sites. (*Compendium §5.3 Engaging in or soliciting any business on lands... at pages 17-18.*)

Definitions: The definitions of the terms “voice control” and “unmanaged” dogs are ambiguous yet allow an NPS “authorized person” to require a dog walker to demonstrate “immediate recall” and threaten impoundment of an off-leash dog if it does not immediately return. Each term has new language that is not found in previous compendiums, NPS dog policy or the 1979 Pet Policy. (*Compendium Section 1.1 Definitions... Pages 3-4.*) There is no explanation and justification for these changes.

Closed Areas at Fort Funston: Fort Funston areas with "signed sensitive restoration areas" are closed to the public, setting a dangerous precedent for further closures without the required public process. (*Page 16.*)

Notice and Comment Rulemaking Is Required

The very regulation that the 2019 Compendium purports to rely upon as authority for imposing the new requirements and restrictions concerning dogs requires NPS actions limiting public use to “be published as rulemaking[s] in the Federal Register” if they would “result in a significant alteration in public use pattern of the park area” or would be “highly controversial.” 36 C.F.R. § 1.5(b). The GGNRA has been down this road before. *See United States v. Barley*, 405 F. Supp. 2d 1121, 1125 (N.D. Cal. 2005) (“After more than twenty years of consistently approving and designating areas for off-leash dog walking, the GGNRA clearly engaged in an ‘activity restriction’ when it suddenly reversed field, closed all areas for off-leash use, and started citing

off-leash dog walkers. Not only did this activity restriction work a ‘significant alteration in the public use pattern of the park area,’ but it was of a ‘highly controversial nature.’ The whole point of Section 1.5(b) was to allow the public an opportunity to be heard *before* such a change occurred.”). To assert that the changes worked by the 2019 Compendium neither “result in a significant alteration in public use pattern” in the GGNRA, nor are “highly controversial,” would be fatuous.

The GGNRA surely knows that the 2019 Compendium’s changes concerning dogs must be pursued through notice and comment rulemaking based on its publication of a proposed rule imposing dog access restrictions in 2016. *See* 81 Fed. Reg. 9139 (Feb. 24, 2016). The GGNRA later withdrew that proposed rule and terminated that rulemaking (*see* 82 Fed. Reg. 61199 (Dec. 27, 2017)), after Save Our Recreation, Marin County DOG, Coastside DOG of San Mateo County, and SFDOG published e-mails, obtained through a Freedom of Information Act suit, showing unlawful conduct by GGNRA staff in the development of the proposed rule. Those organizations fervently hope they will not be compelled to bring suit against the GGNRA once again.

The Administrative Procedure Act Requires a Reasoned Explanation for the Changes

The changes to dog access worked by the 2019 Compendium are arbitrary and capricious agency action in violation of the Administrative Procedure Act. 5 U.S.C. § 706. It is hornbook administrative law that a agency must provide a reasoned explanation for changes in policy, and that this requirement is even more stringently enforced when, as here, the factual situation to which the policy is applied has not changed and the public has for many years relied on accessibility to walk dogs in the GGNRA. *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (“[T]he agency need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate. Sometimes it must—when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account.” *Smiley v. Citibank (South Dakota), N. A.*, 517 U.S. 735, 742 (1996)). It would be arbitrary or capricious to ignore such matters. In such cases it is not that further justification is demanded by the mere fact of a policy change; rather, it is that a reasoned explanation is needed for disregarding facts and circumstances that underly or were engendered by the prior policy. The GGNRA utterly failed to provide the reasoned explanation required for the changes affecting dog access worked by the 2019 Compendium. The 2019 Compendium makes no effort to explain how the underlying, on-the-ground, in-the-Recreation-Area facts have changed so as to support the changes to dog access it has worked. Nor does it take account the public’s historic use of areas of the GGNRA to which access is now subject to new requirements and restrictions, and in some instances prohibited altogether.

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NEPA Analysis Is Required for the Changes

GGNRA violated NEPA by improperly relying on a categorical exclusion and failing to prepare an EIS or, at the very least, an EA. First, the fact that the changes are controversial – as the GGNRA surely knew they would be – precludes the use of a categorical exclusion. Second, the changes – imposing more requirements and restrictions on access (including further limiting areas where voice control is authorized and prohibiting dogs entirely in some areas) – are of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the GGNRA. None of the changes, individually or collectively, is minor, as required for invocation of a categorical exclusion. A categorical exclusion is simply inappropriate for the changes the 2019 Compendium makes. So, while the GGNRA failed to comply with the requirements for the exclusion itself in failing to provide documentation for its invocation of the exclusion, it would not matter even if the GGNRA had done so. A categorical exclusion simply cannot be used here.

Once again, it is surely instructive that in 2016 the GGNRA prepared an EIS for the ultimately withdrawn Dog Management Plan. The GGNRA is now trying to implement requirements and restrictions from that Plan through the 2019 Compendium while foregoing the analysis of environmental impacts required by NEPA.

Conclusion

As set forth above, the 2019 Compendium as it relates to dog access is unlawful. It fails to comply with NPS regulations, the Administrative Procedure Act and NEPA. My clients respectfully request that the GGNRA immediately rescind the requirements and restrictions of the 2019 Compendium concerning dog access. Otherwise, my clients will be left with no option but to file suit seeking declaratory and injunctive relief, and seeking attorney fees under the Equal Access to Justice Act.

Please let me know at your earliest convenience whether the GGNRA will agree to my clients' request.

Sincerely,



Christopher J. Carr

cc: Stan Austin
Regional Director
National Park Service