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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 SAVE OUR RECREATION, SAN FRANCISCO
DOG OWNERS GROUP, a 501(c)(3) non-profit
15 organization, MARIN COUNTY DOG OWNERS
GROUP, and COASTSIDE DOG OWNERS
16 GROUP a 501(c)(3) non-profit organization,

17 Plaintiffs,

18 v.

19 UNITED STATES DEPARTMENT OF THE
INTERIOR, NATIONAL PARK SERVICE
20 and GOLDEN GATE NATIONAL RECREATION
AREA,
21

22 Defendants.
23

Case No. 3:19-cv-08124-JCS

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 federal government reflected in the GGNRA Enabling Act. In the nearly fifty years since the
2 GGNRA was created, the need for such recreational access has only become more pressing, as
3 the areas surrounding the GGNRA have become more developed and grown in population. The
4 many decades of dog walking on the lands now within the GGNRA is not only well-documented
5 but has animated, in part, demands of the Boards of Supervisors of San Francisco, Marin and San
6 Mateo Counties that NPS officials recognize the historical uses and adhere to the deal that the
7 federal government made with those counties when the GGNRA was created.

8 6. Starting in the early 2000s, the GGNRA commenced planning processes through
9 which, over the course of more than a decade, it would seek to radically reduce access to
10 GGNRA lands for people walking dogs. The General Management Plan/Final Environmental
11 Impact Statement (GMP/FEIS) for management of the GGNRA, released in 2014, pre-
12 determined this radical reduction in access for those wishing to walk dogs in the GGNRA, and
13 the Final GMP did the same. NPS also developed a more specific Dog Management Plan (DMP)
14 with its own Supplemental Environmental Impact Statement (SEIS), closing the comment period
15 in February 2014.

16 7. In fall 2015, in order to be fully informed and prepare effective comments on
17 proposed regulations to implement the GGNRA's plans for reducing access for people and their
18 dogs, Plaintiffs sent the GGNRA a FOIA request for relevant public records. In February 2016,
19 NPS published its proposed rule modifying regulations to implement the agency's "preferred
20 alternative" (Dog Rule) which, to no one's surprise, would radically reduce access to GGNRA
21 lands for people to walk dogs. In the meantime, the GGNRA had "slow-walked" production of
22 and purposefully blocked access to the information called for by Plaintiffs' FOIA request. It was
23 apparent that as part of its long-term "strategy," the GGNRA decided to delay production of and
24 keep from public view certain records because it did not want them to be used in connection with
25 the public comment process for the Dog Rule, or in connection with potential future lawsuits
26 challenging its decisions to unlawfully restrict and reduce dog walking.

1 8. The GGNRA’s failure to respond to Plaintiffs’ FOIA request forced them to file
2 suit. Plaintiffs filed their FOIA suit in this Court on April 5, 2016. Case 3:16-cv-01724-JD. The
3 public records ultimately obtained, over the GGNRA’s fierce resistance, revealed the lengths to
4 which the GGNRA would go to prosecute its permanent crusade against dog walking on the
5 federal public lands it manages in the Bay Area. This misconduct included, but was not limited
6 to:

- 7 • GGNRA staff sending e-mails about efforts to restrict dog walking to and from
8 private e-mails, among each other and NGO representatives supporting those
9 efforts;
- 10 • GGNRA staff sending e-mails to other staff asking the recipients to delete e-
11 mails about efforts to restrict dog walking, and noting that “[t]hese conversations
12 are best done by phone”;
- 13 • GGNRA staff soliciting NGO supporters of restrictions on dog walking to attend
14 meetings convened by members of the Bay Area congressional delegation;
- 15 • GGNRA staff soliciting NGO supporters of restrictions on dog walking to submit
16 letters to the editor to the San Francisco Chronicle and other Bay Area
17 newspapers (and collaborating on the contents of the letters);
- 18 • GGNRA staff drafting talking points for NGO supporters of restrictions on dog
19 walking to use with media and in meetings with members of the Bay Area
20 Congressional delegation;
- 21 • GGNRA staff and NGO supporters of restrictions on dog walking colluding to
22 discourage Speaker Pelosi’s office from inquiring about those efforts;
- 23 • GGNRA staff expressing disdain for then-Supervisor Wiener as a result of his
24 objections to their efforts to restrict dog walking;
- 25 • GGNRA staff expressing contempt for Dog Owner Groups; and

- GGNRA staff deliberately excluding scientific evidence because it could have supported less restrictive limitation on access for dog walking.

9. The great majority of these troubling records were not disclosed by the GGNRA until October 2016 in direct response to Plaintiffs’ FOIA lawsuit, after the GGNRA had already disclosed thousands of other public records under order of this Court. Plaintiffs published many of the troubling records to raise public awareness about the mismanagement of public lands on a website: <https://www.woofieleaks.com/>.

10. In December 2016, NPS published notice of its intention to finalize the Dog Rule, to implement exclusions and restrictions on dog walking in the GGNRA based on the Dog Management Plan. On January 10, 2017 and based on the troubling materials produced in response to the FOIA litigation, Representative Jackie Speier, a senior member of the Bay Area’s congressional delegation whose district includes GGNRA lands in San Mateo County, sent a letter to the Inspector General of the Department of the Interior calling for an “independent inquiry into whether NPS employees acted improperly with regards to their work on the GGNRA Dog Management Plan.” Representative Speier continued: “The use of personal e-mail to improperly coordinate with outside advocacy groups is potentially illegal and must not be allowed.” That same day, NPS announced it was indefinitely delaying promulgation of the Dog Rule to investigate whether the GGNRA staff’s use of personal email violated the law or Park Service policies.

11. In December 2017, the NPS formally terminated the GGNRA’s effort to impose a Dog Rule. At that point, Plaintiffs understood GGNRA had ended its crusade to exclude people and their dogs from the lands it manages.

12. Having failed to unlawfully curtail dog walking, the GGNRA is now taking a new approach to achieve the same end. On August 30, 2019—the Friday before Labor Day weekend—the GGNRA posted on its website its “2019 Superintendent’s Compendium.” The 2019 Compendium purports to amend the existing 1979 Pet Policy by imposing significant new

1 requirements for and restrictions on access for people with dogs. While not identical, the 2019
2 Compendium is substantially similar to elements of the withdrawn Dog Plan. Many of these
3 amendments, including changes made to the definitions of “Unmanaged Dogs,” “Voice Control,”
4 and “Managed Dogs” mirror measures contained in that failed Dog Plan.

5 13. This is a variation on a theme the GGNRA has been playing for the last two
6 decades, as it has tried to limit and restrict the ability of Bay Area residents to walk their dogs on
7 federal public recreation lands in San Mateo, San Francisco and Marin Counties. Over that time,
8 this Court has ruled on several occasions that the GGNRA failed to follow its own regulations
9 and provide the required notice and opportunity for public comment when making similar
10 changes.

11 14. With the 2019 Compendium, the crusade to exclude people and their dogs from
12 the GGNRA has resumed. The restrictions and limitations on access and use for people with
13 dogs that the 2019 Compendium purports to make mirror many of the restrictions and limitations
14 that the GGNRA had sought to impose through its ill-fated Dog Rule. That Rule – which the
15 agency pursued through notice-and-comment rulemaking -- was predicated on a Dog
16 Management Plan that had been years in the making, and an Environmental Impact Statement
17 (EIS) (and Supplemental EIS) that the GGNRA believed NEPA required.

18 15. The changes to dog walking that the 2019 Compendium purports to work run
19 afoul of the NPS regulations authorizing superintendents to institute closures and public use
20 limits. Unless such an action is routine, minor and uncontroversial, and does not cause a
21 significant alteration in public use patterns, it must be undertaken through notice-and-comment
22 rulemaking. The changes to access for people and their dogs worked by the 2019 Compendium
23 have not been imposed through notice-and-comment rulemaking. Nor have their impacts been
24 evaluated as required by NEPA; instead, the GGNRA purports to have relied on a NEPA
25 categorical exclusion.

1 16. Plaintiffs file this action seeking the Court’s intervention to once again prevent
2 the GGNRA from violating the law in this revival of its crusade to drive people and their dogs
3 from the urban recreation lands it is charged with managing – this time trying to sneak
4 significant exclusions and restrictions by the public through use of the Superintendent’s 2019
5 Compendium.

6 **JURISDICTION**

7 17. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal
8 question) and 5 U.S.C. §§ 701-706 (APA).

9 18. The core requested relief is authorized by 28 U.S.C. §§ 2201-2202 (declaratory
10 and injunctive relief) and 5 U.S.C. § 706(2) (vacatur).

11 **VENUE**

12 19. Venue is proper in this district under 28 U.S.C. § 1391(e). Defendants consist of
13 a federal agency and an administrative unit of that agency. A substantial part of the events and
14 omissions giving rise to the claims in this action occurred in and/or relate to San Francisco
15 County, which is located within this judicial district. Further, some of the Plaintiffs reside in San
16 Francisco County, making venue proper in this judicial district pursuant to 5 U.S.C. §
17 552(a)(4)(B).

18 **INTRADISTRICT ASSIGNMENT**

19 20. A substantial part of the events and omissions giving rise to the claims in this case
20 occurred in San Francisco, making the San Francisco Division an appropriate venue under Civil
21 L.R. 3-2(d).

22 **PARTIES**

23 21. Save Our Recreation was founded in 2014 amid concerns that certain GGNRA
24 actions would impose restrictions on recreational access for all user groups, not just dog owners.
25 It has over 10,000 supporters. Save Our Recreation serves as an umbrella group to bring
26 together people and organizations supporting recreation in the GGNRA. Save Our Recreation is

1 dedicated to preserving access for all recreational users in the GGNRA, as well as advocating for
2 a comprehensive process to address recreational access that includes public input, independent
3 voices, and thoughtful consideration. All other Plaintiffs in this action are members of Save Our
4 Recreation.

5 22. San Francisco Dog Owners Group (SFDOG) was founded in 1997 in response to
6 closures at Ocean Beach by the GGNRA. SFDOG incorporated in 2000, and has nearly 500
7 dues-paying members and two email list-serves that reach over 1,800 people. SFDOG is a non-
8 profit organization that promotes responsible dog ownership/guardianship, offers educational
9 programs for both dog owners/guardians and the general public, and works for increased off-
10 leash recreational opportunities for responsible dog owners/guardians and their canine
11 companions. SFDOG is the premier citywide dog advocacy organization in San Francisco and
12 works with park-specific dog groups (*e.g.*, Dolores Park DOG, Duboce DOG, etc.) throughout
13 San Francisco. It has held workshops with and actively collaborated with the San Francisco
14 Parks and Recreation Department, San Francisco Animal Care and Control Department, the San
15 Francisco SPCA, the Boys and Girls Clubs of San Francisco, the San Francisco Mounted Police
16 unit, and numerous rescue and animal welfare organizations. SFDOG actively participated in the
17 scoping process relating to GGNRA's 2017 Dog Management Plan and its accompanying
18 environmental impact statements. SFDOG and its members also actively participated in the
19 Service's past NEPA process related to the 2017 Dog Management Plan, including the prior
20 FOIA suit against the GGNRA concerning its refusal to produce public records about that
21 process. SFDOG and its members remain actively engaged in protecting their interests in the
22 GGNRA, including most recently by submitting comments addressing the procedural and
23 substantive deficiencies of the 2019 Compendium.

24 23. Marin County Dog Owners Group (Marin DOG) was founded in 2013 in response
25 to the release of the GGNRA's environmental review materials relating to the 2017 Dog
26 Management Plan. Marin DOG is a grassroots organization with a network reach of over 1000

1 people and considers itself a watchdog for fair pet policies in Marin County. Marin DOG
2 supports environmental stewardship, and believes that stewardship and recreational use are
3 compatible—as they have been for decades. Marin DOG has partnered with the Marin Humane
4 Society and other GGNRA stakeholder groups to support programs that educate the public on
5 how to share our open spaces responsibly. Marin DOG has also launched stewardship programs
6 and conducted educational outreach campaigns. It works to improve communications, offer
7 solutions and elevate dog owner representation with GGNRA, Marin County Parks and Open
8 Space, Marin Municipal Water District, local Community Service Districts and local parks and
9 recreation areas. Marin DOG has an interest in the GGNRA’s attempt to impose major aspects
10 of the 2017 Dog Management Plans through the 2019 Compendium.

11 24. Coastside Dog Owners Group of San Mateo County (Coastside DOG) is
12 dedicated to promoting responsible dog walking and advocating for dog-friendly open space on
13 the San Mateo County coast. The group (formerly Montara Dog Group) was initially founded in
14 2008 to celebrate the community’s longstanding culture of dog walking and stewardship at
15 Rancho Corral de Tierra (Rancho)—an area which many of its members helped save from
16 development prior to its being purchased by Peninsula Open Space Trust. Coastside DOG has
17 placed and maintained pet waste bags and bins throughout Rancho since 2008, and still provides
18 the only trash removal service at Rancho. In addition, Coastside DOG has sponsored community
19 trail etiquette trainings designed to promote safety and best practices in multi-use trail recreation
20 at Rancho and other local open space areas. The trainings bring together dog walkers,
21 equestrians, and cyclists to practice simple etiquette rules to ensure a positive recreational
22 experience for all. Today, Coastside DOG has grown to nearly 500 members spanning from
23 Pacifica to Half Moon Bay, and has expanded its mission to include advocating for dog-friendly
24 open space on the entire San Mateo County coast. Coastside DOG (then the Montara Dog
25 Group) and its members submitted comments to the GGNRA regarding the 2017 Dog
26 Management Plan and associated environmental review materials. Coastside DOG submitted

1 comments to the GGNRA identifying the unlawfulness of the attempt to smuggle major
2 components of the failed 2017 Dog Management Plan into effect through the 2019 Compendium
3 without the requisite notice-and-comment rulemaking process.

4 25. Thousands of individuals and organizations, including Plaintiffs and their
5 members, submitted comments on the GGNRA's 2017 Dog Management Plan objecting to
6 efforts to restrict access to dog walking in the GGNRA. Plaintiffs and their members have
7 discussed the potential effects of the 2019 Compendium with many individuals, other citizen
8 groups, and organizations in the three counties and the larger Bay Area. Thousands of
9 individuals in the San Francisco Bay Area are interested in the significant policy decisions
10 reflected in the 2019 Compendium. Just as many newspaper articles and TV news segments
11 covered the 2017 Dog Management Plan, unsurprisingly, the 2019 Compendium's impact on dog
12 walking in the GGNRA has spun up newspaper articles and TV news coverage. Further, those
13 restrictions on dog walking have implications for other traditional recreational uses of the
14 GGNRA.

15 26. Plaintiffs and their members regularly recreate within the GGNRA, and the
16 amendments in the 2019 Compendium directly impact their activities and interests. Absent relief
17 from this Court, Plaintiffs will be irreparably harmed by the GGNRA's unlawful conduct.

18 27. Defendant NPS is the agency responsible for regulation of the use of all national
19 parks; although the GGNRA is not a national park – it is a national recreation area—the NPS is
20 responsible for its regulation and management. The NPS is an agency within defendant United
21 States Department of Interior.

22 28. Defendant GGNRA is a federal recreation area administered by the Service. The
23 GGNRA operates under the Department of the Interior and NPS regulations, policies and
24 guidelines.

LEGAL BACKGROUND

A. Administrative Procedure Act

29. The Administrative Procedure Act (APA) provides judicial review for persons who have been adversely affected or aggrieved by a final agency action for which there is no other adequate remedy in a court. 5 U.S.C. §§ 551(2), 701-702, 704. Violations of NPS regulations implementing the National Park Service Organic Act (Organic Act) and violations of the National Environmental Policy Act (NEPA) are subject to judicial review under the APA.

30. Under the APA, a reviewing court must “hold unlawful and set aside agency action, findings, and conclusions” found to be, among other things, “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

31. Pursuant to the APA, an agency adopting a rule generally must engage in the rule making process and adhere to specific notice-and-comment requirements. *See* 5 U.S.C. §§ 551(5), 553. Subject to enumerated exceptions, rules that must adhere to notice-and-comment requirements include “agency statement[s] of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy” *Id.* § 551(4).

32. Agency actions that have the force of law, including actions that provide a new basis of liability, are legislative (or substantive) rules subject to the APA’s notice-and-comment requirements. *See Gill v. U.S. Dep’t of Justice*, 913 F.3d 1179, 1186 (9th Cir. 2019); *Erringer v. Thompson*, 371 F.3d 625, 630 (9th Cir. 2004) (“[I]f there is no legislative basis for enforcement action on third parties without the rule, then the rule necessarily creates new rights and imposes new obligations. This makes it legislative.” (quotation marks and citation omitted)).

B. National Park Service Organic Act and Implementing Regulations

33. The Golden Gate National Recreation Area (GGNRA) was established “[i]n 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

1 to provide for the maintenance of needed recreational open space necessary to urban
2 environment and planning” Pub. L. No. 92-589, § 1, Oct. 27, 1972, 86 Stat. 1299; 16
3 U.S.C. § 460bb. Congress specifically identified dog walking as a recreational activity that
4 would continue to occur in the GGNRA. *See* House Report No. 92-1391, p. 4852. Since its
5 establishment as a national recreation area, Congress has expanded the GGNRA several times.
6 *See, e.g.*, Pub. L. No. 93-544, Dec. 26, 1974, 88 Stat. 1741 (adding 750 acres of contiguous
7 private lands in Marin County to the GGNRA); Pub. L. No. 96-199, Mar. 5, 1980, 94 Stat. 67
8 (extending GGNRA’s northern boundary); Pub. L. No. 96-607, Dec. 28, 1980, 94 Stat. 3544
9 (expanding GGNRA into San Mateo County and along the coast).

10 34. As a part of the National Park System, NPS manages the GGNRA in accordance
11 with the Organic Act to “promote and regulate the use of the National Park System” to “conserve
12 the scenery, natural and historic objects, and wild life in the System units and to provide for the
13 enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such
14 means as will leave them unimpaired for the enjoyment of future generations.” 54 U.S.C. §
15 100101. The Organic Act empowers the Secretary of the Interior to “prescribe such regulations
16 as the Secretary considers necessary or proper for the use and management of System units.” *Id.*
17 § 100751(a).

18 35. NPS regulations authorize superintendents of recreational areas to, consistent with
19 applicable laws, impose and terminate restrictions, limits, closures, designations, conditions, and
20 visiting hour restrictions in the recreation areas they oversee. 36 C.F.R. § 1.5(a).
21 Superintendents’ compendia are used, in part, to document such measures. *See* NPS
22 Management Policies 2006 at 86, *available at* https://www.nps.gov/policy/MP_2006.pdf.

23 36. When adopting or terminating such a measure, NPS must strictly adhere to
24 established substantive and procedural protocols. Its own regulations provide:

25 Except in emergency situations, a closure, designation, use or
26 activity restriction or condition, or the termination or relaxation of such,
27 which is of a nature, magnitude and duration that will result in a
significant alteration in the public use pattern of the park area, adversely

1 affect the park’s natural, aesthetic, scenic or cultural values, require a
2 long-term or significant modification in the resource management
objectives of the unit, or is of a highly controversial nature, shall be
3 published as rulemaking in the Federal Register.

36 C.F.R. § 1.5(b)(emphasis added).

4 37. Before “implementing or terminating a restriction, condition, public use limit or
5 closure, NPS must “prepare a written determination justifying the action” that sets forth the
6 reasons why the restriction, condition, public use limit or closure has been established and why
7 less restrictive measures will not suffice. 36 C.F.R. § 1.5(c). In the case of an action terminating
8 a restriction, condition, public use limit or closure, the Service must provide a written
9 determination of why the restriction is no longer necessary and a finding that the termination will
10 not adversely affect park resources. *Id.*

11 38. NPS regulations also provide that “[v]iolating a closure, designation, use or
12 activity restriction or condition, schedule of visiting hours, or public use limit is prohibited.” *Id.*
13 § 1.5(f).

14 39. NPS regulations further provide that a “person convicted of violating a provision
15 of the regulations contained in parts 1 through 7,” including regulations governing the GGNRA,
16 will be subject to criminal penalties under 18 U.S.C. § 1865. *Compare* 36 C.F.R. § 1.3 *with id.*
17 § 7.97.

18 **C. National Environmental Policy Act**

19 40. The National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, is the
20 basic national charter for the protection of the environment. NEPA’s purpose is to help public
21 officials make decisions that are based on an understanding of environmental consequences, and
22 take actions that protect, restore, and enhance the environment. 40 C.F.R. § 1500.1(c).

23 41. NEPA requires federal agencies to prepare an Environmental Impact Statement
24 (EIS) for all “major Federal actions significantly affecting the quality of the human
25 environment.” 42 U.S.C. § 4332(C).

1 42. When a federal agency is not certain whether an EIS is required, it must prepare
2 an Environmental Assessment (EA). 40 C.F.R. §§ 1501.3, 1501.4, 1508.9. If the EA concludes
3 that the proposed project will have no significant impact on the human environment, the agency
4 may issue a Finding of No Significant Impact (FONSI) and proceed with the proposed action. If
5 the agency concludes that there may be significant impacts, then it must prepare an EIS. *Id.*
6 § 1501.4.

7 43. To determine whether a proposed agency action may produce significant impacts,
8 “NEPA requires consideration of both context and intensity.” *Id.* § 1508.27. Significance “must
9 be analyzed in several contexts,” including “the affected region, the affected interests, and the
10 locality.” *Id.* § 1508.27(a). To evaluate intensity, the agency is to consider, *inter alia*, “[t]he
11 degree to which the effects on the quality of the human environment are to be highly
12 controversial” and “[t]he degree to which the action may establish a precedent for future actions
13 with significant effects or represents a decision in principle about a future consideration.” *Id.*
14 § 1508.27(b).

15 44. The U.S. Department of the Interior has adopted regulations implementing NEPA
16 that supplement those regulations adopted by the Council on Environmental Quality. *See*
17 *generally* 43 C.F.R. § 46.10 *et seq.* These regulations are binding on all constituent bureaus,
18 which include services such as NPS. *See id.* §§ 46.10(a); 46.30. NPS recognizes that it is bound
19 by these regulations and adheres to them. *See generally* National Park Service NEPA Handbook
20 2015, *available at*
21 https://www.nps.gov/subjects/nepa/upload/NPS_NEPAHandbook_Final_508.pdf.

22 45. Generally, actions determined to have “no significant individual or cumulative
23 effect on the quality of the human environment” are considered “categorically excluded” from
24 the requirement to prepare an EA or an EIS. *See* 43 C.F.R. § 46.205(a) (describing actions
25 categorically excluded from further NEPA review); 40 C.F.R. § 1508.4; *see also* 43 C.F.R.
26 § 46.210 (listing departmental categorical exclusions).

1 46. Even where an agency action would normally be categorically excluded from
2 further NEPA review, the agency must “determine whether [the proposed action] meets any of
3 the extraordinary circumstances in section 46.215; if it does, further analysis and environmental
4 documents must be prepared for the action.” 43 C.F.R. § 46.205(c)(1).

5 47. The identified criteria that establish extraordinary circumstances within
6 categorical exclusions include proposed actions that “[h]ave highly controversial environmental
7 effects or involve unresolved conflicts concerning alternative uses of available resources” or
8 “[e]stablish a precedent for future action or represent a decision in principle about future actions
9 with potentially significant environmental effects.” *Id.* § 46.215(c)-(d).

10 **FACTUAL BACKGROUND**

11 48. The GGNRA consists of lands in San Mateo, San Francisco and Marin Counties
12 that have been used by Bay Area residents for recreation for much of the last century.

13 49. Thousands of Bay Area residents walk dogs in the GGNRA every day.

14 50. Dog walking in the GGNRA predates Congress’ creation of the recreation area in
15 1972 by decades.

16 51. Congress contemplated that dog walking would be an important recreational
17 activity that would continue in the GGNRA. *See, e.g.*, House Rep. No. 92-1391, p. 4852.

18 52. In 1978, the GGNRA Citizens’ Advisory Commission (the Commission)
19 proposed a Pet Policy after receiving input from park staff and the public. That Policy provided
20 general guidance on dog walking and recommended certain locations in the park for on-leash and
21 off-leash (or “voice control”) dog walking.

22 53. Subsequently, the Commission recommended the Pet Policy to the GGNRA
23 Superintendent for adoption as a GGNRA-specific policy (later known as the “1979 Pet Policy”).

24 54. The 1979 Pet Policy has governed dog walking activities in the GGNRA for
25 decades.

1 55. When the GGNRA has attempted to restrict dog walking access beyond the terms
2 of the 1979 Pet Policy, organizations of dog walkers have, on multiple occasions, successfully
3 challenged those attempted restrictions.

4 56. In the late 1990s, for example, the GGNRA sought to close access for all people,
5 including those walking dogs, to 12 acres of a previously off-leash recreational area at Fort
6 Funston. 81 Fed. Reg. 9,139, 9,141 (Feb. 24, 2016).

7 57. Dog walking groups successfully challenged that closure in this Court. That
8 Court determined that GGNRA’s closure likely constituted a significant alteration in public use
9 pattern and was highly controversial, such that GGNRA would have had to provide notice and an
10 opportunity for public comment in accordance with its regulations. *See generally Fort Funston*
11 *Dog Walkers v. Babbitt*, 96 F. Supp. 2d 1021 (N.D. Cal. 2000).

12 58. Approximately one year later, in February 2001, the GGNRA rescinded the
13 longstanding 1979 Pet Policy without holding public hearings and without any period of public
14 comment. The rationale was that the 1979 Pet Policy was in conflict with the National Park
15 Service system-wide regulation requiring dogs to be leashed. A year later, the National Park
16 Service announced in the Federal Register that the agency intended to begin a rulemaking
17 process to determine dog walking access in the GGNRA (the rulemaking assumed all dog
18 walking was illegal and would consider if there was anywhere dog walking could be allowed).
19 81 Fed. Reg. at 9,141. However, the agency took no action to actually begin the rulemaking
20 process for another three years.

21 59. Subsequently, persons cited by GGNRA employees for walking their dogs off-
22 leash consistent with the 1979 Pet Policy challenged the rescission of that Policy in this Court.
23 *See generally United States v. Barley*, 405 F. Supp. 2d 1121 (N.D. Cal. 2005).

24 60. The Court concluded that not only did the rescission “work a significant alteration
25 of public use pattern of the park area, but it was of a highly controversial nature.” *Id.* at 1125
26 (quotation marks and citation omitted). The Court thus determined that the attempted rescission

1 of the 1979 Pet Policy was invalid because the agency failed to follow its own regulations by not
2 providing the requisite opportunity for public comment. *Id.* at 1126.

3 61. Since the *Barley* decision, the 1979 Pet Policy has remained in effect, except for
4 portions of Ocean Beach and Crissy Field, where the GGNRA adopted a special regulation to
5 restrict off-leash dog walking to protect sensitive wildlife. *See* 36 C.F.R. § 7.97(d).

6 62. Another effort to limit GGNRA access to persons walking dogs was undertaken in
7 2011 when the GGNRA released its draft Dog Management Plan and Environmental Impact
8 Statement (collectively, the Draft Dog Plan). It provided 135 days for public comment on the
9 Draft Dog Plan, having extended the comment period once due, in part, to public interest.

10 63. A related draft Dog Management Plan and Supplemental EIS (collectively, the
11 Supplemental Draft Dog Plan) was published on September 6, 2013. GGNRA provided 162
12 days for public comment on the Supplemental Draft Dog Plan, having extended the comment
13 period twice due, in part, to public interest.

14 64. The preferred alternative of the Supplemental Draft Dog Plan would have placed
15 new limitations on dog walking in the GGNRA, including, *inter alia*, entirely closing areas to
16 dog walking and limiting areas where off-leash dog walking would be allowed.

17 65. On February 24, 2016, the agency published in the *Federal Register*, at 81 Fed.
18 Reg. 9,139, a proposed rulemaking to implement this preferred alternative (Dog Rule). It
19 provided 90 days for public comment on the Dog Rule, having extended the comment period
20 once due, in part, to public interest.

21 **PLAINTIFFS' PROSECUTE FREEDOM OF INFORMATION ACT SUIT AND**
22 **AVERT MIDNIGHT DOG RULE**

23 66. In the meantime, in fall 2015 Plaintiffs had submitted a Freedom of Information
24 Act (FOIA) request, seeking information related to the Draft Dog Plan and Supplemental Draft
25 Dog Plan that was not already publicly available.

1 67. After the GGNRA refused to provide the public records identified in their FOIA
2 request, Plaintiffs filed a FOIA lawsuit on April 5, 2016. The public records ultimately produced
3 by the GGNRA in fall 2016 showed the misconduct in the dog planning process set forth above.

4 68. NPS released its Final Dog Management Plan and Environmental Impact
5 Statement on or about December 9, 2016. NPS explained that it would proceed to publish the
6 Dog Rule after the 30-day period required by NEPA had run. In other words, NPS stated its
7 intent to push the Dog Rule across the finish line and give it the force of law as a “midnight
8 regulation” – just prior to the change of Administrations.

9 69. On January 10, 2017, following the disclosure of the GGNRA’s e-mails to the
10 public on woofieleaks.com, NPS stated it was delaying further consideration of the Dog Rule
11 pending completion of an investigation into the GGNRA’s misconduct, as revealed by the e-
12 mails.

13 70. Nearly a year later, on December 27, 2017, NPS announced that it “no longer
14 intend[ed] to prepare a final rule or issue a Golden Gate National Recreation Area dog
15 management plan. The NPS has terminated the rulemaking process.” *See* 82 Fed. Reg. 61,199
16 (Dec. 27, 2017).

17 **THE 2019 GGNRA SUPERINTENDENT’S COMPENDIUM**

18 71. Having repeatedly failed to accomplish its aim to drastically curtail dog walking
19 in the GGNRA, the agency is now taking a new approach to achieve the same end. On August
20 30, 2019—the Friday before Labor Day weekend—the GGNRA posted on its website the 2019
21 Superintendent’s Compendium (2019 Compendium).

22 72. The 2019 Compendium was not published as a rulemaking in the *Federal*
23 *Register*; it was not subjected to the related notice-and-comment process.

24 73. Nor did the GGNRA develop an EIS or an Environmental Assessment in
25 accordance with the National Environmental Policy Act (NEPA).

1 74. The 2019 Compendium amends the existing 1979 Pet Policy by imposing
2 significant new requirements for and restrictions on access for people with dogs.

3 75. The 2019 Compendium, while not identical, is substantially similar to elements of
4 the withdrawn Dog Plan. Many of these amendments, including changes made to the definitions
5 of “Unmanaged Dogs,” “Voice Control,” and “Managed Dogs,” mirror measures contained in
6 that failed Dog Plan.

7 76. In addition, although the 2019 Compendium was issued with an accompanying
8 table purportedly identifying changes made since the 2017 Compendium, that table was
9 incomplete. Trail closures indicated on Exhibit Maps #37, #38, and #39, which were not noted
10 on the table of changes, indicate that dog walking would be eliminated on trails at the southern
11 entrance to Milagra Ridge; parts of the Milagra Ridge trail and the Milagra Creek Overlook trail;
12 two trails at Mori Point, including the Mori Bluff Trail, that are not closed to persons without
13 dogs; and significant acreage and trails at Rancho Corral de Tierra, despite a 2013 GGNRA
14 agreement with Congresswoman Jackie Speier that designated all of Rancho Corral de Tierra
15 open to on-leash dog walking.

16 77. The 2019 Compendium also bans dog walking entirely from two areas at Fort
17 Funston where they have been allowed off-leash according to the 1979 Pet Policy. It also
18 includes a new mechanism for future closures at Fort Funston and elsewhere – that GGNRA staff
19 can ban dog walking from areas now and in the future simply by posting a sign that says
20 “sensitive restoration area,” without going through any notice-and-comment rulemaking process
21 before the closure goes into effect. This will allow GGNRA staff to institute, over time and in
22 piecemeal fashion, the major access closures contained in the terminated Dog Management Plan
23 at Fort Funston and elsewhere, without going through the notice-and-comment rulemaking
24 process required for substantial and highly controversial changes to recreational access.

25 78. Concerned by these and other changes, on September 16, 2019, Plaintiffs, through
26 the undersigned counsel, sent a letter by electronic mail and U.S. Mail to Superintendent Laura

1 Joss outlining their legal concerns associated with the GGNRA imposing such significant and
2 controversial changes to dog walking policy through the 2019 Compendium.

3 79. On September 23, 2019, having received no response to counsel’s letter,
4 representatives of SFDOG, Save Our Recreation, and Coastside DOG participated in phone calls
5 with Michael Savidge, the Director of Strategic Planning and Partnership for GGNRA.

6 80. During those two phone calls, Mr. Savidge confirmed that the table of changes
7 accompanying the 2019 Compendium is not comprehensive. He noted that the exhibit maps
8 showing additional changes are for illustrative purposes only, were intended for internal use by
9 law enforcement, and that a separate set of maps will be provided for public use. Mr. Savidge
10 also stated that although the 2019 Compendium included access closures at Muir Beach and
11 Rodeo Beach when water is flowing between the lagoons and the ocean, he was not aware of
12 how those closures would be enforced.

13 81. On September 27, 2019, 28 days into the 30-day public comment period, the
14 GGNRA released a draft memorandum from Chief Park Ranger David Schifsky to General
15 Superintendent Laura Joss titled “2019 Superintendent’s Compendium Changes and
16 Justifications.” In that memorandum, Chief Ranger Schifsky states that:

17 While some of the 1979 Pet Policy’s provisions had been
18 incorporated previously in to the park’s Compendium, the Pet Policy had
19 not been reviewed in light of on-the-ground changes that have occurred
20 since 1979 and new information regarding resource management
21 concerns, visitor use conflicts, and public safety considerations. . . . The
22 2019 Compendium proposes slight modifications to the Pet Policy to
23 address changed field conditions (including expanded Voice Control in
one area), new resource protection considerations, and multiple and
sometimes conflicting forms of public uses. We have also translated the
1979 Pet Policy into clear regulatory language, with accompanying maps
herein demarcating on leash and Voice Control areas, to assist dog
walkers in planning their visit to the park.

24 82. On October 16, 2019, plaintiffs SFDOG and Coastside DOG submitted written
25 comments reattaching the September 16, 2019 letter from Plaintiffs’ counsel. Those letters
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1 detailed the scope of the changes between the 2017 Compendium and the 2019 Compendium, as
2 well as similarities between the failed Dog Plan and the 2019 Compendium.

3 83. On October 18, 2019, Plaintiffs, along with Congresswoman Jackie Speier and a
4 representative from Speaker Nancy Pelosi's office, met with Superintendent Joss to discuss the
5 changes proposed in the 2019 Compendium, describe Plaintiffs' concerns, and attempt to resolve
6 the situation without resorting to litigation. Although Superintendent Joss agreed to correct
7 "labeling errors" on certain exhibit maps, she failed to address Plaintiffs' primary concerns
8 regarding the inappropriately broad scope of the highly contentious changes included in the 2019
9 Compendium.

10 84. Despite the GGNRA's attempts to characterize the changes in the 2019
11 Compendium as "minor," the similarities between this document and the Dog Plan refute that
12 characterization. Significant and highly controversial changes like those contained in the 2019
13 Compendium cannot be made, except by rulemaking published in the *Federal Register* after
14 having undergone the requisite NEPA review.

15 **CLAIMS FOR RELIEF**
16 **FIRST CLAIM**
(Violation of 36 C.F.R. § 1.5)

17 85. Plaintiffs incorporate by reference all previous allegations for purposes of this
18 claim.

19 86. NPS violated its own regulations by failing to publish the 2019 Compendium in
20 the *Federal Register* as a rulemaking subject to notice-and-comment requirements. NPS
21 regulations require:

22 [A] closure, designation, use or activity restriction or condition, or termination or
23 relaxation of such, which is of a nature, magnitude and duration that will result in a
24 significant alteration in the public use pattern of the park area, adversely affect the park's
25 natural, aesthetic, scenic or cultural values, require a long-term or significant
26 modification in the resource management objectives of the unit, or is of a highly
27 controversial nature, shall be published as rulemaking in the Federal Register.

28 36 C.F.R. § 1.5(b).

1 87. The 2019 Compendium, among other things, imposes new closures and
2 restrictions and conditions on uses and activities in the GGNRA. These closures, restrictions,
3 conditions, and other changes dramatically limit and alter historical access and allowable
4 activities for people with dogs throughout the Recreation Area. The 2019 Compendium, for
5 example, prohibits on-leash dog walking in new areas (*e.g.*, San Mateo County locations of the
6 GGNRA) and restricts off-leash dog walking in areas governed by the 1979 Pet Policy (*e.g.*, Fort
7 Funston). The 2019 Compendium also adopts new vague definitions (*e.g.*, “unmanaged dogs,”
8 “voice control,” and “managed dogs”) that effectively grant unfettered discretion to GGNRA
9 employees to enforce related restrictions.

10 88. Many of the changes made in the 2019 Compendium mirror the changes the
11 GGNRA attempted to make in its highly controversial proposed Dog Management Plan that the
12 NPS terminated in December 2017.

13 89. These changes constitute a “significant alteration in the public use pattern of the
14 park area” and are “of a highly controversial nature.” Indeed, this Court has found more than
15 once that restrictions on dog walking in the GGNRA are highly controversial and, independently,
16 constitute significant alterations in the public use pattern of the park area. *See, e.g., United*
17 *States v. Barley*, 405 F. Supp. 2d 1121, 1125 (N.D. Cal. 2005) (“After more than twenty years of
18 consistently approving and designating areas for off-leash dog walking, the GGNRA clearly
19 engaged in an ‘activity restriction’ when it suddenly reversed field, closed all areas for off-leash
20 use, and started citing off-leash dog walkers. Not only did this activity restriction work a
21 ‘significant alteration in the public use pattern of the park area,’ but it was of a ‘highly
22 controversial nature.’”); *Ft. Funston Dog Walkers v. Babbitt*, 96 F. Supp. 2d 1021, 1035 (N.D.
23 Cal. 2000) (explaining that the “administrative record is replete with evidence that the [NPS] was
24 aware the closure [related to dog walking] would be highly controversial”).

25 90. The GGNRA published the 2019 Compendium on its website on August 30,
26 2019. Even though the changes clearly are highly controversial and constitute significant

1 alterations in public use patterns in the area, and the GGNRA fully knows this, it did not publish
2 the 2019 Compendium in the *Federal Register* or undertake the requisite notice-and-comment
3 rulemaking process. The GGNRA’s refusal to do this was unlawful. 36 C.F.R. § 1.5(b); *Barley*,
4 405 F. Supp. 2d at 1125 (“The whole point of Section 1.5(b) was to allow the public an
5 opportunity to be heard *before* such a change occurred.”).

6 91. Instead of providing for public participation as required, the GGNRA discreetly
7 published the 2019 Compendium on August 30, 2019, the Friday before Labor Day Weekend.

8 **SECOND CLAIM**
9 **(Violation of APA 5 U.S.C. § 553)**

10 92. Plaintiffs incorporate by reference all previous allegations for purposes of this
11 claim.

12 93. In addition, the GGNRA’s failure to subject the 2019 Compendium to notice-and-
13 comment requirements violated the APA.

14 94. The 2019 Compendium is a legislative rule subject to notice-and-comment
15 requirements because it carries the force of law. Persons deemed by GGNRA employees to be in
16 violation of the 2019 Compendium’s measures are subject to civil, and potentially criminal,
17 liability. *See* 36 C.F.R. §§ 1.3; 1.5(f). And without the 2019 Compendium, the GGNRA could
18 not issue citations or impose penalties. *See Erringer v. Thompson*, 371 F.3d 625, 630 (9th Cir.
19 2004) (citing *Hemp Indus. Ass’n v. Drug Enf’t Admin*, 333 F.3d 1032, 1088 (9th Cir. 2003) (“[I]f
20 there is no legislative basis for enforcement action on third parties without the rule, then the rule
21 necessarily creates new rights and imposes new obligations. This makes it legislative.”); *see also*
22 *Gill v. Dept. of Justice*, 913 F.3d 1179, 1186 (9th Cir. 2019) (“Legislative rules have the ‘force
23 of law,’ and are subject to notice and comment under the APA before becoming effective.”).

24 95. Because the 2019 Compendium constitutes a legislative rule, the APA required
25 the GGNRA to adhere to the notice-and-comment requirements of 5 U.S.C. § 553.

THIRD CLAIM
(Violation of NEPA 42 U.S.C. § 4321 *et seq.*)

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3 96. Plaintiffs incorporate by reference all previous allegations for purposes of this
4 claim.

5 97. NEPA required the GGNRA to prepare an EIS, or at minimum, an EA before
6 publishing the 2019 Compendium.

7 98. The GGNRA's reliance on a categorical exclusion found in the NPS NEPA
8 Handbook was improper. First, the GGNRA failed to follow binding NEPA regulations that
9 required the agency to "evaluate[]" and "determine whether it meets any of the extraordinary
10 circumstances in section 46.215." 43 C.F.R. § 46.205(c)(1). The GGNRA equally failed to
11 follow the categorical exclusions process delineated in the NPS NEPA Handbook, which
12 required it to: (1) define the proposed action, identify issues, and evaluate associated impacts; (2)
13 determine whether there is a categorical exclusion that could apply to the proposed action; (3)
14 determine whether any extraordinary circumstances exist; and (4) document the potential
15 impacts of the action covered by the categorical exclusion. NPS NEPA Handbook at 38-39.

16 99. Second, the GGNRA failed to adequately explain its decision to apply the
17 categorical exclusion. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007). Its
18 conclusory single sentence stating that "[t]he proposed changes will enhance the park's ability to
19 protect park resources, public health and safety, and address visitor use concerns" is inadequate.

20 100. Third, the 2019 Compendium does not reasonably fall within the ambit of the
21 categorical exclusion the GGNRA relies on—"[m]inor changes in amounts or types of visitor use
22 for the purpose of ensuring visitor safety or resource protection in accordance with existing
23 regulations." Among other things, the new closures and other restrictions for on- and off-leash
24 dog walking and other changes made by the 2019 Compendium cannot reasonably be
25 characterized as minor when considered in context.

1 101. Fourth, regardless of the applicability of the invoked categorical exclusion, the
2 GGNRA’s reliance on that exclusion was unreasonable because the extraordinary circumstances
3 exception applies in this case. Restrictions, limitations, designations, and conditions related to
4 dog walking in the GGNRA are highly controversial, considering the degree of public
5 involvement surrounding these issues, including a substantial history of litigation over similar
6 past GGNRA actions. Furthermore, the GGNRA is employing a segmented approach to
7 accomplish what it could not do in one fell swoop in 2017—*i.e.*, it is seeking to establish
8 precedent for future action.

9 102. Accordingly, the GGNRA violated NEPA because it was required to prepare an
10 EIS, or, at minimum, an EA before publishing the 2019 Compendium.

11 **FOURTH CLAIM**
12 **(Violation of APA 5 U.S.C. § 706)**

13 103. Plaintiffs incorporate by reference all previous allegations for purposes of this
14 claim.

15 104. The GGNRA failed to provide the requisite reasoned justification and explanation
16 for numerous measures in the 2019 Compendium, including those related to closures, limitations
17 related to on- and off-leash dog walking, and other changes.

18 105. The APA requires agency decision-making to be reasoned. Courts are precluded
19 from attempting “to make up for such deficiencies” and cannot “supply a reasoned basis for the
20 agency’s action that the agency itself has not given.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State*
21 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

22 106. Separately, NPS regulations implementing the Organic Act also require “a written
23 determination justifying the action,” and that determination must “set forth the reasons why the
24 restriction, condition, public use limit or closure has been established and why less restrictive
25 measures will not suffice.” 36 C.F.R. § 1.5(c).

1 107. The GGNRA wholly failed to provide any written justification for numerous
2 measures in the 2019 Compendium. This void of reasoning violates the APA and regulations
3 implementing the Organic Act.

4 108. In several instances where the GGNRA provided a written statement, the reasons
5 offered were conclusory, unreasoned, lacked supporting evidence, unclearly attributed, and
6 otherwise deficient in contravention of the APA and the regulations implementing the Organic
7 Act.

8 109. In publishing the 2019 Compendium, the GGNRA also violated the regulations
9 implementing the Organic Act by failing to explain why less restrictive measures would not
10 suffice.

11 110. This lack of, and otherwise insufficient, reasoning to support its measures renders
12 the 2019 Compendium unlawful.

13 **FIFTH CLAIM**
14 **(Violation of APA 5 U.S.C. § 706)**

15 111. Plaintiffs incorporate by reference all previous allegations for purposes of this
16 claim.

17 112. The 2019 Compendium is independently unlawful because the GGNRA failed to
18 follow the APA's requirements for agency policy changes.

19 113. "Unexplained inconsistency between agency actions is a reason for holding an
20 interpretation to be an arbitrary and capricious change." *Organized Vill. of Kake v. U.S. Dep't of*
21 *Agric.*, 795 F.3d 956, 966 (9th Cir. 2015) (quotation marks and citation omitted).

22 114. "[A] policy change complies with the APA [only] if the agency (1) displays
23 awareness that it is changing position, (2) shows that the new policy is permissible under the
24 statute, (3) believes the new policy is better, and (4) provides good reasons for the new policy,
25 which, if the new policy rests upon factual findings that contradict those which underlay its prior
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1 policy, must include a reasoned explanation . . . for disregarding facts and circumstances that
2 underlay or were engendered by the prior policy.” *Id.* (quotation marks and citation omitted).

3 115. In releasing the 2019 Compendium, the GGNRA did not display an awareness of
4 any specific policy changes it was making or provide good reasons for the new policies.

5 116. Since releasing the 2019 Compendium, the GGNRA was alerted to this deficiency
6 and released a supplemental document entitled “2019 Superintendent’s Compendium of Changes
7 and Justifications” that attempts to overcome this shortfall. To the extent that the GGNRA has
8 provided explanations in this or other documents, those explanations constitute impermissible
9 *post hoc* rationalizations that cannot be relied upon to support the 2019 Compendium.

10 117. Regardless, those explanations are comprised of overly broad and otherwise
11 summary justifications insufficient to satisfy the APA’s requirements for an agency policy
12 change.

13 118. The 2019 Compendium is thus unlawful for these separate reasons.

14 **PRAAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs ask that the Court enter judgment that includes the following
16 relief:

- 17 1. An order directing Defendants to vacate and set aside the 2019 Compendium until
18 they comply with all applicable laws, including NEPA and the APA.
- 19 2. An order granting Plaintiffs an award of attorneys’ fees and costs under the Equal
20 Access to Justice Act, 28 U.S.C. § 2412, or any other applicable law; and
- 21 3. An order granting Plaintiffs such other relief as the Court deems just and proper.
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1 DATED: December 17, 2019

BAKER BOTTS LLP

2
3 /s/ Christopher J. Carr

CHRISTOPHER J. CARR

Attorneys for Plaintiffs

SAVE OUR RECREATION, SAN

FRANCISCO DOG OWNERS GROUP,

MARIN COUNTY DOG OWNERS GROUP

and COASTSIDE DOG OWNERS GROUP

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