



October 16, 2019

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

SFDog Comment on 2019 GGNRA Superintendent's Compendium

These comments are being submitted on behalf of the San Francisco Dog Owners Group (SFDog), a nonprofit organization that promotes responsible dog guardianship in the San Francisco Bay Area. In addition, please find attached a copy of the comments on the 2019 Superintendent's Compendium submitted by our law firm, Baker Botts, on September 16, 2019 on behalf of SFDog, Marin County Dog, Save Our Recreation, and Coastside Dog of San Mateo County. The letter should be considered as incorporated into this comment.

Unfortunately, it appears that the GGNRA – quite unnecessarily – is making history repeat itself. The Park Service terminated the Dog Management Plan/EIS in 2017 following a FOIA lawsuit brought by our coalition that revealed National Park Service employees' use of private email, bias, and collusion (all available on WoofieLeaks.com), and after an internal investigation into NPS staff actions during the Dog Management Plan process. SFDog had hoped we could begin to rebuild and repair the relationship between GGNRA staff and dog groups that had been sorely tested by the development of that plan. And, to be honest, we thought we were seeing that.

During last winter's government shutdown, SFDog paid for maintenance at Fort Funston to ensure its parking lot remained open, so people, their dogs, and their kids could continue to have safe, fun days at the site. We also organized volunteers to pick up trash at Ocean Beach and Lands End along with Congresswoman Jackie Speier and Congressman Jared Huffman during the shutdown. When we later organized clean-ups at parks throughout San Francisco last spring, we found GGNRA staff to be helpful and supportive. We thought maybe they were beginning to see us as the park lovers we are, and not as enemies who need to be removed from the parks.

But then, on August 30, 2019, the Friday before Labor Day, we were blindsided by the release of the 2019 Superintendent's Compendium. It was deeply disappointing because our group had been communicating with GGNRA Superintendent Laura Joss on a regular basis, and she was very much aware of our interest in proposed changes to the Dog Policy. We were shocked to see

dog walking once again portrayed as dangerous and anti-environmental. We were shocked to see elements from the failed Dog Management Plan resurfacing in the Compendium.

As stated in our attorney's letter (September 16, 2019), the use of the 2019 Superintendent's Compendium to make changes to dog walking access in the GGNRA is unlawful for a number of reasons. Restricting access for people walking dogs at various sites and changing definitions in ways that will increase conflict with dog walkers are not minor corrections, but instead are limits on public use that will result in significant changes in the public use pattern in the GGNRA and are highly controversial. While either of these conditions alone, according to National Park Service regulations (36 C.F.R. section 1.5(b)), necessitates notice and comment rulemaking, both are present here. The fact that significant and highly controversial changes require rulemaking has been confirmed by court rulings against the GGNRA concerning previous efforts to restrict dog walking.¹

Because it failed to conduct notice and comment rulemaking for the changes to dog walking wrought by the 2019 Compendium, the agency also failed to provide reasoned explanation for those changes. This is even more important because the public has long relied on access to walk dogs in the GGNRA and any claim that facts-on-the-ground have changed is dubious. Giving reasons is a fundamental requirement of the Administrative Procedure Act and the cases interpreting it.

Moreover, the GGNRA violated the National Environmental Policy Act (NEPA) in purporting to rely on a categorical exclusion, rather than review the impacts of the changes made by the 2019 Compendium to dog walking. Such review is required not only because the changes are controversial, but (separately) because the requirements and restrictions they impose will result in a significant alteration in the public use pattern of the GGNRA.

There are yet more systemic deficiencies in the 2019 Compendium's changes to dog walking. Even if the changes to dog walking could lawfully have been made via the 2019 Compendium – i.e., even if notice and comment rulemaking (along with the requisite reasoned explanation for the changes) was not required – the Compendium does not include, as required by National Park Service regulation (36 C.F.R. section 1.5(c)), an adequate written justification for each of the changes that includes “an explanation of why less restrictive measures will not suffice.” Many changes suffer from yet more legal deficiencies, such as overbreadth or vagueness in violation of fundamental due process rights.

Indeed, most of the changes to dog walking are not included in the “Compendium Table of Changes for 2019 Update.” We pointed this out to GGNRA staff on August 30, 2019, the day the

¹ The Compendium process is not a public process. As stated on the GGNRA's Compendium webpage, the GGNRA is merely advising the public about what changes it will make. As such, the National Park Service is under no obligation to respond to the public's concerns and criticisms or to provide a justification for ignoring them as would be required in notice and comment rulemaking. Nor could the GGNRA “cure” the failure to conduct the requisite notice and comment rulemaking through ad hoc action purporting to receive and respond to public comment.

Compendium was released. Yet in emails sent to members of the public after August 30, in response to their comments opposing the dog walking changes, Charlie Strickfaden, the Chief of Communications, External Affairs, and Special Park Uses for the GGNRA, claimed that: “The compendium changes are listed in a table, as an effort to be very transparent...” and “We are finding that the public has missed the Table of Changes we provided on our website....”

Strickfaden is misleading the public to think the changes we identified as significant were listed in the Table of Changes when, in fact, they are not. He further claimed that the purpose of the “revision focused on making it more readable and providing better maps” than the previous compendium. That claim is dubious on its face.

Michael Savidge, Director, Strategic Planning and Partnership for the GGNRA, subsequently stated to us that, in fact, the Table of Changes erroneously does not contain all of the changes, and that the maps in the compendium are for “internal use” by law enforcement and “illustrative purposes” and that a different set of maps will be developed for the public.

The GGNRA cannot simultaneously say the purpose of the Compendium is only to provide better maps (not make significant access changes) and also say that the maps in the Compendium are “just” illustrative.

These failures to provide the information to which even the GGNRA appears to believe the public is entitled preclude the public from providing informed feedback under the 30-day deadline before the compendium is signed.

Because GGNRA staff have not responded with transparency to the public about the changes made to dog walking in the Compendium, those changes must be removed. But even if staff had been transparent, because the Compendium announcement is not a notice and comment rulemaking process, the significant and highly controversial changes made to dog walking in the Compendium are unlawful and must be removed.

1) THE BELATED EXPLANATION FOR CHANGES POSTED TO THE GGNRA’S LAWS AND POLICIES WEBPAGE DOES NOT EXCUSE THE GGNRA’S FAILURE TO CONDUCT NOTICE AND COMMENT RULEMAKING.

A September 2019 memorandum titled “2019 Superintendent’s Compendium Changes and Justifications” from David Schifsky, GGNRA Chief Park Ranger, to GGNRA General Superintendent Laura Joss suddenly appeared on the GGNRA Laws and Policies webpage when the Park Service released a revised Compendium (that added a section on e-bikes) and announced that they were extending the public awareness period to October 28, 2019 because of this addition. This announcement was made on September 27, 2019, three days before the end of the original 30-day public awareness period.

In the memorandum, Chief Ranger Schifsky says under section 7. Dog Walking:

While some of the 1979 Pet Policy’s provisions had been incorporated previously in to [sic] the park’s Compendium, the Pet Policy had not been reviewed in light of on-the-ground changes that

have occurred since 1979 and new information regarding resource management concerns, visitor use conflicts, and public safety considerations. Law enforcement staff consulted with other park staff to determine whether any modification to the Pet Policy were [sic] necessary.

It is clear from this statement that GGNRA staff intended to use the Superintendent's Compendium to change elements of the 1979 Pet Policy. In two separate legal cases against the GGNRA – one involving a closure at Fort Funston, the other involving tickets given to people walking dogs at Crissy Field when the GGNRA banned dog walking – three federal district court judges ruled that the Park Service must hold a public notice and comment process when making changes that are significant or highly controversial. Yet, here is the Chief Park Ranger admitting his intention to change elements of the 1979 Pet Policy without a public rule-making process.

The GGNRA claims the changes made are minor. Not so. Threatening dog walkers that their dog could be impounded by Park Rangers who know little about dog behavior or closing access to people with dogs at the southern entrance to Milagra Ridge – to name just two of the dog walking changes – are not minor.

In a meeting with Superintendent Joss in January 2018, she assured representatives of recreation and dog groups, me included, that there was no need to amend the GGNRA General Management Plan to specifically address dog walking concerns after the Dog Management Plan was withdrawn. She told us emphatically that the 1979 Pet Policy would continue to govern dog walking in the GGNRA and, in places where it did not apply, the NPS nationwide pet regulation would be policy.

Now, the GGNRA is admittedly using the Superintendent's Compendium to change elements of the 1979 Pet Policy.

Because the changes to dog walking made in the Compendium were not made through notice and comment rulemaking, they are unlawful and must be removed.

2) THE GGNRA IS USING THE SUPERINTENDENT'S COMPENDIUM TO IMPLEMENT ELEMENTS OF THE DRAFT FINAL RULE FOR A DOG MANAGEMENT PLAN THAT WAS WITHDRAWN IN 2017.

In particular, the changes made to definitions in the Compendium include new terms and phrases that first appeared in the Draft Final Rule for a Dog Management Plan that was withdrawn on October 19, 2017. There is no written justification for these changes in definitions.

For example, the Draft Final Rule for a Dog Management Plan included the following definitions:

Uncontrolled dog means a dog, on or off-leash, that exhibits any behavior that threatens, disturbs, harasses, or demonstrates aggression toward another person, dog, or domesticated animal or wildlife in a manner that a reasonable person would find threatening, disturbing, harassing, or aggressive. Such behaviors include snarling, growling, repeated barking at, howling, chasing, charging, snapping at, or uninvited attempting to take or taking food from a person;

demonstrating uninvited or unwanted physical contact with a person or another animal; annoying, pursuing, hunting, harming, wounding, attacking, capturing, or killing wildlife or a domesticated animal; digging into the ground, soil or vegetation; or failing to be under voice and sight control in a Voice and Sight Control Area. (p. 27 of Draft Final Rule)

The dog walker must demonstrate this ability [immediate recall directly to his or her side, without regard to circumstances or distractions] when requested to do so by an authorized person. (p. 28 of Draft Final Rule)

... a dog walker must produce official documentation [proof of dog license and rabies vaccination] ... when asked by an authorized person. (p. 37 of Draft Final Rule)

This definition of “uncontrolled dog” is so broad and vague, it could be stretched, especially by Park Rangers untrained in dog behavior, to include nearly every behavior by every dog.

Indeed, the definitions and requirements on dog walkers contained in the Draft Final Dog Management Rule seemed intended solely to encourage the harassment of people walking with a dog by “authorized persons”:

- The Draft Final Rule encouraged Park Rangers, US Park Police, and other “authorized persons” to stop anyone they see walking with a dog and demand proof of rabies vaccination, dog license, and a demonstration of immediate recall if the dog is off-leash.
- Because no evidence was given in the Draft Final Rule to support this new “stop and demand” policy, it was clearly arbitrary and capricious, something that is not allowed in an EIS process.
- The cumulative effect of being stopped repeatedly and asked for dog license, proof of rabies vaccination, and to demonstrate “immediate recall” could drive many people to stop walking with their dog in the GGNRA. Is this the real agenda of GGNRA staff who developed this Compendium?

As a result, and wholly apart from the Administrative Procedure Act violations, these changes violate the Due Process rights of people wishing to walk with their dogs in the GGNRA.

Consider the following definitions in the 2017 Superintendent’s Compendium:

Unmanaged Dogs means dogs that annoy, harass, or attack people, wildlife, livestock or other dogs, are presumed to be not under control. (p. 4)

Voice Control means dogs are within earshot and eyesight of the owner/handler and respond immediately to commands to return to leash when called. (p. 4)

Managed Dogs mean those dogs under control of their owner at all times. This control may be by voice or by leash, depending on the legal dog walking status of the area visited. The criterion is that the dog may not harass any person or animal. (p. 3)

Compare those to the definitions of the same terms in the 2019 Superintendent’s Compendium:

Unmanaged Dog means a dog that annoys, harasses, harms or threatens a person in a manner that a reasonable person would find annoying, harassing, harmful or threatening, or that annoys, harasses, harms or threatens another animal or harms park resources. This includes threatening behavior by dogs towards people or other animals such as snarling, snapping, chasing, charging, directed and sustained barking at, or uninvited taking or attempting to take food from another visitor or pet. (p. 4 of Revised Compendium)

Voice control means a dog that is within earshot and eyesight of its owner or handler and that responds immediately to commands to return to leash when called or signaled. The owner or handler must demonstrate this ability when requested to do so by an authorized person. A dog not meeting these requirements will be considered running-at-large under 36 CFR, Section 2.15(d). (p. 4 and 5 of Revised Compendium)

Managed Dog means a dog that is under the control of its owner or handler at all times through the use of a leash not in excess of six feet in length, or by Voice Control in those designated areas open to off leash dog walking, such that the dog does not annoy, harass, harm, or threaten any person or animal or harm park resources. (p. 4 of Revised Compendium)

The changes made to the definitions of “Unmanaged Dogs,” “Voice Control,” and “Managed Dogs” in the 2019 Compendium come directly from the Draft Final Rule of the Dog Management Plan that was terminated in 2017: behaviors that a “reasonable person” would find annoying or threatening; dog walkers must demonstrate immediate recall if asked by an “authorized person”; and the overly broad lists of dog behaviors that could be called “unmanaged,” among others.

The 2019 Compendium is being used unlawfully to implement elements of the failed Dog Management Plan. These elements in the Compendium must be removed.

3) THE DEFINITIONS OF “UNMANAGED DOGS,” “MANAGED DOG,” AND “VOICE CONTROL” IN THE 2019 COMPENDIUM WERE IMPROPERLY CHANGED FROM THOSE IN THE 2017 COMPENDIUM.

As noted above, the definitions of these three terms in the 2019 Compendium were changed from those used in the 2017 Compendium. This change is not noted in the Table of Changes for the Compendium. There is no written justification included in the Compendium itself for these changes, despite the Code of Federal Regulations’ requiring such justification.

The memorandum titled “2019 Superintendent’s Compendium Changes and Justifications,” written by David Schifsky, GGNRA Chief Park Ranger and sent to GGNRA General Superintendent Laura Joss, contains the following statement:

The 1979 Pet Policy prohibited unmanaged dogs from the park but did not clearly explain “unmanaged” dog behaviors. The 2017 Compendium included brief definitions for “managed” and “unmanaged” dogs. The 2019 Compendium improves upon these definitions so that behavioral expectations are clear and enforcement can be effective. (p. 9)

But, as was evident in the Draft Final Rule for a Dog Management Plan that was terminated in 2017, these new definitions are overly broad and do not, in fact, make enforcement more effective.

First, consider the definition of “Unmanaged Dogs” and its claim that an unmanaged dog engages in behavior that a “reasonable person would find annoying, harassing, harmful, or threatening.” What is a “reasonable person?” This new definition is so vague and broad that it would allow Park Rangers essentially unbounded discretion to subjectively decide what is acceptable animal behavior. Is the “reasonable person” a dog owner, or someone who does not own a dog? Is the reasonable person someone who grew up with dogs and is familiar with how they act, or someone who did not have that experience? The definition of “Unmanaged Dogs” has no standard. Moreover, even if the definition provided an intelligible and enforceable standard, there is no reason to believe that GGNRA staff has the experience and qualifications to properly administer it.

In its public comment on the Draft Final Rule for a Dog Management Plan, the Marin Humane Society, an organization with over 100 years of experience in animal control, said:

Rarely do non-animal responders completely understand dog behavior in a fashion that generates factual data. More importantly, individual perceptions of animal behavior require fact gathering to enable enforcement responders to adequately understand what the animal behavior impacts really are. Determination of these violations can easily be inaccurate... (p. 3 of their comment).

The San Francisco SPCA, in its comment on the Draft Final Rule for a Dog Management Plan, said:

National Park Service employees are not normally trained as animal control officers and therefore lack the expertise to determine which dog behaviors are undesirable and to effectively enforce the Proposed Rule. (p. 3 of their comment)

Clearly, the experience and expertise of the two local organizations most qualified to understand dog behavior and animal control enforcement – Marin Humane Society and the San Francisco SPCA – demonstrate to them that it is often difficult for enforcement personnel who are not trained in animal behavior to correctly understand what a dog is doing or has done. Clearly this change in definition does not, in fact, make enforcement of the desired dog behavior more “effective.”

And, as described earlier, the listing of a wide variety of potentially “unmanaged” behaviors is so overly broad that nearly any dog behavior could be twisted to fit this definition. For example, two dogs that are playing will chase one another. Yet, by this definition, both dogs could be considered “unmanaged.” This is absurd and is not helpful in telling dog owner/handlers what behaviors are acceptable.

A similar argument can be made for the verbiage added to the definition of “Managed Dogs” in the 2019 Compendium.

The new definitions of “Unmanaged Dogs” and “Managed Dogs” should be removed from the 2019 Compendium.

Similarly, the definition of “Voice Control” is changed in the 2019 Compendium from the 2017 Compendium. This change is not included in the Table of Changes, nor is a written justification included in the text of the Compendium itself. The 2019 definition includes the concept from the withdrawn Dog Management Plan that dog owners/handlers must demonstrate immediate recall if asked to do so by an “authorized person.” This seems intended to encourage enforcement personnel to harass dog owners/handlers by repeatedly demanding that they “demonstrate” immediate recall even if neither the dog nor the owner/handler is doing anything wrong.

But more concerning is the inclusion of the idea that a dog that does not demonstrate immediate recall will be considered to be “running-at-large under 36 CFR, Section 2.15(d).” That section of the CFR reads:

Pets running-at-large may be impounded, and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture or 72 hours from the time of capture if the owner is unknown.

It is clear from the context of this section, that “running-at-large” refers to a pet that is running wild, with no human around to control it. For example, a cat that is feral or a dog that has escaped from its home and is running “wild” without its owner anywhere nearby. That is never the case with a dog that is off-leash with its owner/handler a few tens of feet away.

What the definition of “Voice Control” in the 2019 Compendium will do is allow Park Rangers to impound dogs who do not respond fast enough (according to the Ranger’s individual definition of “immediate recall”). This will only increase conflicts between dog owners/handlers and Park Rangers. One can only too easily imagine the confrontation when a Ranger tries to take a dog away from its owner because it’s recall wasn’t “immediate” enough.

There is absolutely no reason to conflate dogs running off-leash (with owners/handlers nearby) with dogs running-at-large. And there is no reason why this should be included in a definition of Voice Control.

The definition of Voice Control in the 2019 Compendium must be removed.

4) THE 2019 COMPENDIUM ADDS A NEW WAY TO RESTRICT ACCESS TO DOG WALKING AT FORT FUNSTON AND OTHER SITES WITHOUT A PUBLIC NOTICE AND COMMENT PROCESS.

On page 19 of the 2019 Compendium, a list of places that are open for walking dogs under “Voice Control” includes the following:

Fort Funston, those portions depicted on [sic] are open to walking dogs under Voice Control. Dogs are not allowed in the Habitat Protection Area, in signed sensitive restoration areas, or in NPS and Park Partner administrative and operational areas.

It is clear from Exhibit Map #29 of the 2019 Compendium, that there is only one “signed sensitive restoration area” at Fort Funston, a five-acre area just south of a beach access path and south of the Habitat Protection Area. This Habitat Protection Area was closed after a public process in 2000. But the five-acre area never went through a public notice and comment process before it was designated as a “sensitive restoration area.” The GGNRA merely put up a sign with that designation. Therefore, this closure is not lawful and should be removed from the Compendium.

This section of the 2019 Compendium appears to be setting a precedent wherein areas at Fort Funston – and, indeed, at any site in the GGNRA – can be closed to access for people with dogs merely by posting a sign that says: “sensitive restoration area.” Over time, the GGNRA can eventually close nearly all of Fort Funston, as they intended to do with the Dog Management Plan that was withdrawn. Closures such as this are significant and highly controversial, and, therefore, must go through a public rule-making process. Therefore, this section, while already unlawful with respect to the area having been closed without a proper public process, appears to be setting up an unlawful process for closing areas to dog walking in the future.

Indeed, closures at Fort Funston were the very issue that started the “dog wars” in the late 1990s. Federal Court rulings in two cases that included access closures established that these changes cannot be made by administrative fiat – i.e., in a Compendium. They require a rule-making process.

While insult is added to injury to the public by virtue of the fact that this new closure is not listed in the Table of Changes, it being listed would still not make it lawful. The bottom line is that restrictions on dog walking in the GGNRA cannot be affected by a compendium.

The section of the 2019 Compendium that says any “signed restoration area” can be closed to dog walking at Fort Funston – or elsewhere – must be removed.

5) TRAIL CLOSURES IN SAN MATEO COUNTY ARE SIGNIFICANT AND HIGHLY CONTROVERSIAL AND CANNOT BE MADE IN A COMPENDIUM.

The Exhibit Maps #37, #38, and #39 of the 2019 Compendium indicate that several trails and other areas at sites in San Mateo County will now be closed to dog walking. These closures are not referenced in the text of the Compendium, nor are they mentioned in the Table of Changes. They are only apparent from close inspection of the maps themselves. There is no written justification provided for the changes in the text of the Compendium as required by the Code of Federal Regulations. Moreover, and in any event, such changes – all of which have a significant impact on dog walking and are controversial – cannot be made by Compendium, but rather can only be made through a public notice and comment process.

- For example, Exhibit Map #37 indicates that dog walking would be eliminated on the trails at the southern entrance to Milagra Ridge (on land owned by the North Coast County Water District for which GGNRA has an historic easement agreement that allows access for people and dogs). This change would require people with dogs (many of whom live in neighborhoods adjacent to the south entrance) to get in their cars and drive all the way to the north entrance to Milagra Ridge (over three miles away) if they want to access the on-leash trails at the site. This is a significant impact on dog walkers and is very controversial. Such a change cannot be made in a Compendium, nor can it be made without a public notice and comment process. In addition, parts of the Milagra Ridge trail and the Milagra Creek Overlook trail are being closed to dog walking via the Exhibit #37 map. This was confirmed by Michael Savidge during a September 23, 2019 phone call with Coastside DOG of San Mateo County. This, too, is a change that cannot be made by Compendium.
- In addition, Exhibit Map #38 shows two trails closed to dog walking at Mori Point that are not closed to people without dogs. This is a significant change, especially since one of the trails – the Mori Bluff Trail – is very popular with people walking dogs. Its closure will have a significant, controversial impact on dog walkers. This change cannot be made by Compendium.
- And Exhibit Map #39 indicates that some trails are available for on-leash dog walking at Rancho Corral de Tierra. The reality is that, in 2013, in an agreement with Congresswoman Jackie Speier, then-GGNRA Superintendent Frank Dean made all of Rancho open to on-leash dog walking, until the Dog Management Plan could be finalized. That plan was terminated and never finalized. Therefore, all of Rancho Corral de Tierra is currently open to on-leash dog walking. Yet Exhibit Map #39 shows on-leash dog walking only on certain trails. This constitutes a significant reduction in on-leash dog walking access, something that is highly controversial. These changes cannot be made by Compendium.

In addition, Title 36 of the Code of Federal Regulation, Section 1.5(c) states:

Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the superintendent shall prepare a written determination justifying the action. That determination shall set forth the reason(s) the restriction, condition, public use limit or closure authorized by paragraph (a) has been established, and an explanation of why less restrictive measure will not suffice....

There is no written justification included in the Compendium for nearly all of the changes to dog walking, and certainly no explanation of why less restrictive measures would not suffice. This violation of the Code of Federal Regulation adds to the improper closure of access without a notice and comment rulemaking process.

The trail closures indicated in San Mateo County at Milagra Ridge, Mori Point, and Rancho Corral de Tierra are significant and highly controversial and cannot be made in a Compendium. Exhibit Maps #37, #38, and #39 must be removed from the Compendium.

6) ACCESS CLOSURES AT MUIR BEACH, RODEO BEACH, AND OAKWOOD VALLEY ARE SIGNIFICANT AND CONTROVERSIAL AND CANNOT BE MADE IN A COMPENDIUM.

The Compendium proposes to close access for all people, including dog walkers, at Muir Beach and Rodeo Beach when there is water flowing between the lagoons at each site and the ocean (p. 9 of the Compendium). The written justification includes generic, boilerplate language about sensitive species and habitat. That is an inadequate justification.

GGNRA staff must provide more specific information to justify a closure that will mean people cannot access either beach from their western end, even if it is only for certain times of the year. What specific species will be impacted? How will people with or without dogs walking through the water impact those species, if at all? This specific information must be included in any written justification for an access closure in the Compendium.

In addition, the Code of Federal Regulations requires the GGNRA to provide a written explanation of why measures less restrictive than a total closure will not suffice (Title 36 CFR Sec 1.5(c)). There is no such explanation for the closures at Muir Beach and Rodeo Beach in the Compendium.

In a phone conversation with Michael Savidge, Director of Strategic Planning and Partnerships at the GGNRA, after the Compendium was released, we asked how they planned to stop people from walking in the flowing water on the beach. He replied that they did not know and had hired a consultant to figure that out. The public has the right to know how a proposed closure will be enforced. Without knowing that, the public cannot make an informed comment on the closure.

Indeed, many people suspect that this closure will not be fairly enforced. This restriction could then be used to justify removing all Voice Control access at Muir Beach. The fact that people even suspect this removal of access could happen is evidence that this closure is considered by the public to be significant and controversial and, therefore, cannot be accomplished by Compendium.

There is also no adequate justification provided in the Compendium for the closure of the pond off of the Oakwood Valley trail in Marin (p. 9 of the Compendium). Generic, boilerplate comments about sensitive species is not enough. There have never been protected species in the pond. Indeed, the presence of bullfrogs in the pond would seem to prevent other species of frogs, such as red-legged frogs, from becoming established. This pond is a man-made dairy ranch stock pond, not something that occurred naturally. If the GGNRA is now claiming that protected species have mysteriously been discovered there, it is not a natural occurrence.

The Compendium does not include any explanation of why less restrictive measures, short of total closure, will not suffice.

As with the closures at Muir Beach and Rodeo Beach, there is no indication of how this closure will be enforced. Will the GGNRA put a heavy fence around the pond? The public does not want

that. Michael Savidge told us in a recent phone conversation that one of purposes of a Compendium is to make it easier for Park Rangers to enforce regulations. Given the confusion about how the restrictions on access in Marin will be enforced and widespread doubts about how fairly they will be enforced, this Compendium is a failure, wholly apart from the fact that the significant and highly controversial changes it would make to dog walking cannot be made by Compendium.

Because there are inadequate written justifications, no explanation of why less restrictive measures will not suffice, and because of concerns about how the closures will be enforced, the access closures at Muir Beach, Rodeo Beach, and Oakwood Valley must be removed. But even if those deficiencies were not present, the access changes cannot be made by Compendium, but rather must go through a public notice and comment process.

7) THE REQUIREMENT THAT DOGS WEAR OR DISPLAY DOG LICENSES OR DOG LICENSE TAGS CANNOT BE MADE BY COMPENDIUM.

The 1979 Pet Policy requires that dogs in the GGNRA be licensed in the jurisdiction where their owners live. But there is no requirement in the 1979 Pet Policy that those licenses be worn or displayed. This new requirement will have a significant impact on people walking dogs. None of the three counties with GGNRA land requires that dog licenses be worn or displayed.

Adding this requirement will mean that those who do not display their licenses, even though they have them, could be harassed or ticketed by Park Rangers with no benefit to the GGNRA, increasing conflict between people with dogs and Park Rangers.

In its comment on the Draft Rule for a Dog Management Plan (which also had a license and rabies vaccination requirement) in 2016, the Marin Humane Society said:

Efforts to enforce rabies control issues with regards to license tags, rabies certificates as outlined on page 10 of the Proposed Rule seem to be confusing, inappropriate and unrelated to walking a dog. While we applaud the ability to ensure compliance with local dog licensing parameters, there are so many different ordinances and enforcement methods depending on local animal services/control regulations and local Health Department rules that this area of enforcement will be senseless. (p. 3 of Marin Humane Society comment)

The Marin Humane Society comment added:

As an example, the Marin Humane Society issues a permanent license as per our county's regulations. These tags do not give Park staff any information if the license or tag is valid. When we enforce the licensing law we never make it a burden for the dog guardian. Our officers determine who the registered owner/guardian is through our record systems. This will create a negative impact on our agency if you need to rely on reaching our staff to determine the validity of a Marin County dog license, and we would only be available during business hours." (p. 3 of Marin Humane Society comment)

Local experts on animal control issues think this idea of stopping people and asking to see proof of dog licenses is unwarranted, unnecessary, and unwise.

The requirement that dogs must wear or display dog licenses or dog license tags cannot be imposed via a compendium and must be removed.

8) COMMERCIAL DOG WALKING PERMITTING MUST INCLUDE SAN MATEO COUNTY

The 2019 Compendium explicitly bans commercial dog walking at the San Mateo County GGNRA sites without adequate public process. The GGNRA enacted an interim commercial dog walking permit in 2014. Without providing a rationale, the interim rule did not include GGNRA sites in San Mateo County. The rule says:

The scope of this proposed action is limited, applying only to GGNRA lands in San Francisco and Marin counties where dog walking is allowed; GGNRA lands in San Mateo County would not be affected. ...

The expected duration of this proposed interim action is approximately two years, when the NPS intends to replace it with a special regulation published in the Code of Federal Regulations that will govern dog walking, including commercial dog walking, in GGNRA.

In 2017, the GGNRA Dog Management Plan was terminated leaving the interim rule as the basis for commercial dog walking in the GGNRA and leaving San Mateo County commercial dog walkers in limbo.

There is no language about commercial dog walking in San Mateo County in the 2017 Compendium. However, the 2019 Compendium says:

Commercial Dog Walking: Commercial Dog Walking pursuant to an NPS permit is allowed in accordance with permit conditions in specified Park areas in San Francisco and Marin Counties. Commercial Dog Walking is prohibited in Park areas in San Mateo County. (p. 21)

The fact that commercial dog walking is permitted in San Francisco and Marin Counties but not in San Mateo County calls out for correction for equity and other reasons.

The wording in the 2019 Compendium constitutes a significant change in the status of commercial dog walking in San Mateo County, from uncertain limbo to an outright ban. A significant change cannot be made in a Compendium. Therefore, the ban on commercial dog walking in San Mateo County is unlawful and must be removed.

9) FIRST AMENDMENT AREAS CHANGED

The 2019 Compendium appears to designate only eight areas in the entire GGNRA where First Amendment activities, such as rallies, protests, and distribution of printed materials, can take place. All are in either San Francisco or Marin Counties. There are no locations anywhere in San

Mateo County. The 2017 Compendium includes no restrictions on where First Amendment activities can take place.

Such sweeping restrictions on where one can conduct First Amendment activities are significant and highly controversial and cannot be made by Compendium.

The 2019 Compendium illegally restricts where First Amendment activities can take place, including banning them anywhere in San Mateo County. These restrictions must be removed.

CONCLUSION

The changes in the 2019 Compendium that touch on dog walking are not minor. They are significant and highly controversial and cannot be made in a Compendium, where they are not part of a public notice and comment process. All these changes that touch on dog walking must be removed from the 2019 Superintendent's Compendium.

Sincerely,

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cc:

Speaker of the House Nancy Pelosi
Congresswoman Jackie Speier
Congressman Jared Huffman
David Vela, Deputy Director, National Park Service
Stan Austin, Regional Director, National Park Service
Laura Joss, Superintendent, Golden Gate National Recreation Area
Chris Carr, Baker Botts

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