

**EMERGENCY PETITION TO THE
GOLDEN GATE NATIONAL RECREATION AREA,
NATIONAL PARK SERVICE,
U.S. DEPARTMENT OF THE INTERIOR,
TO PROMULGATE AND ENFORCE
36 C.F.R. § 2.15(a)(2) AT THE
GOLDEN GATE NATIONAL RECREATION AREA**



Desecration by Defecation: Two Bags of Dog Feces Hung Over a Plea for Protecting Imperiled Birds at the GGNRA.
Fort Funston – July 1, 2005

Submitted By

**Action for Animals • Guide Dogs for the Blind • Coleman Advocates for Children
and Youth • Environmental Quality for Urban Parks • Center for Biological
Diversity • Golden Gate Audubon Society • Sierra Club, San Francisco Bay
Chapter • California Native Plant Society, Yerba Buena Chapter • San Francisco
League of Conservation Voters • Dune Ecological Restoration Team**

NOTICE OF PETITION

August 16, 2005

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Secretary Gale Norton
Department of Interior
1849 C Street, NW
Washington, DC 20240

Director Fran P. Mainella
National Park Service
1849 C Street, NW
Washington, DC 20240

Regional Director Jon Jarvis
Pacific West Region
National Park Service
One Jackson Center
1111 Jackson Street
Oakland, CA 94607

Superintendent Brian O'Neill
Golden Gate National Recreation Area
Fort Mason, Building 201
San Francisco, CA 94123

Dear Secretary Norton, Director Mainella, Regional Director Jarvis, and
Superintendent O'Neill:

Pursuant to the Right to Petition Government Clause in the First Amendment to
the United States Constitution,¹ the Administrative Procedure Act ("APA"),² and 43

¹ Congress shall make no law . . . abridging . . . the right of the people . . . to petition Government for a redress of grievances." U.S. Const., amend. I. The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967). It shares the "preferred place" accorded in our system of government to the First Amendment freedoms, and has "a sanctity and a sanction not permitting dubious intrusions." Thomas v. Collins, 323 U.S. 516, 530 (1945). "Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger." Id. The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. United States v. Cruikshank, 92 U.S. (2 Otto) 542, 552 (1875).

² The APA provides that "each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. § 553(e).

C.F.R. Part 14,³ Action for Animals, Guide Dogs for the Blind, Coleman Advocates for Children and Youth, Environmental Quality for Urban Parks, Center for Biological Diversity, Golden Gate Audubon Society, Dune Ecological Restoration Team, Yerba Buena Chapter of the California Native Plant Society, San Francisco Bay Chapter of the Sierra Club, and San Francisco League of Conservation Voters hereby petition the National Park Service to promulgate and enforce a rule implementing 36 C.F.R. § 2.15(a)(2) at the Golden Gate National Recreation Area (“GGNRA”). Rulemaking is necessary due to recent court decisions making clear that the GGNRA has, without following formal or informal rulemaking procedures, exempted itself from this validly promulgated, nation-wide regulation in significant portions of the GGNRA.

Good cause exists to promulgate and enforce 36 C.F.R. § 2.15(a)(2) at the GGNRA on an expedited or emergency basis. As demonstrated by this petition, the voice control agenda has not been adequate to protect people, our pets, wildlife, or the park from harm caused by dogs roaming off-leash, and off-leash incidents are likely to increase due to recent court orders inhibiting the Park Service’s ability to enforce park safeguards. As explained by the Humane Society of the United States and the International City/County Management Association, the voice control agenda and other non-physical pet restraint measures are inadequate to protect park visitors.⁴ The Park Service thus faces an urgent problem that cannot be adequately addressed solely by the voice control agenda currently in place, and under similar circumstances courts have found that good cause exists to promulgate rules on an emergency basis. Hawaii Helicopter Operators Assn. v. FAA, 51 F.3d 212 (9th Cir. 1995).

³ The Department of Interior’s regulations require the National Park Service to give “prompt consideration” to this petition and “notify promptly” the petitioners about the action taken. 43 C.F.R. § 14.3.

⁴ Geoffrey L. Handy, Humane Society of the United States, International City/County Management Association, Animal Control Management: A Guide for Local Governments (2001) (“Adequate restraint should be defined as physical control of animals; alternative methods such as voice control, electronic fences, and chemical sprays are not reliable for dogs whose basic predatory, sexual, or territorial defense drives have been triggered.”).

Recently the Park Service announced a proposal to proceed with a negotiated rulemaking process to address pet management regulations at the GGNRA. 70 Fed. Reg. 37,108 (June 28, 2005). While this process may result in permanent leash law enforcement throughout the park, the process will not result in final rulemaking until 2007 or 2008, leaving the GGNRA unprotected for several years. *Id.* at 37,109. Under such circumstances, it is appropriate for the National Park Service to initiate emergency rulemaking procedures to restore leash law enforcement at the GGNRA on an interim basis, see, e.g., National Customs Brokers and Forwarders Assn. v. United States, 59 F.3d 1219 (Fed. Cir. 1995) (finding good cause to exist where interim rulemaking restores agency compliance with applicable law), and if necessary and appropriate supersede these emergency rules with regulations adopted through the negotiated rulemaking process.

An appropriate response to this emergency petition would be to propose, accept 30 days of public comment, and make effective upon final publication in the Federal Register pursuant to 5 U.S.C. § 553(d)(3) the following regulation:⁵

36 C.F.R. § 7.97. Golden Gate National Recreation Area.

...

(d) *Pets*. The following are prohibited: Failing to crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically confine a pet at all times.

Judicial review under the APA requires reviewing courts to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). Accordingly, the National Park Service cannot unreasonably delay action on this emergency petition. Consistent with this mandate, the Department of Interior’s petition processing regulations, and the exigent circumstances that currently exist at the GGNRA, we expect

⁵ Alternatively the Park Service may implement this regulation pursuant to 36 C.F.R. § 1.5(b) without publication in the Federal Register under its emergency rulemaking authority.

a final response to this emergency petition within 60 days. If you have any questions about this request, do not hesitate to contact me at (415) 436-9682 x 301.

Sincerely,

A handwritten signature in black ink that reads "Brent Plater". The signature is written in a cursive, slightly stylized font.

Brent Plater

I am as strident and ardent an animal rights person as you're going to find: I don't eat animals, I don't wear animals, and I don't let my dogs off-leash. It's not a question of the dog's right, it's a question of protecting the dog. The idea that there's some kind of right to run off-leash—this is why animal rights people get a bad name, because they have idiotic ideas like this.

- Rutgers law professor Gary Francione, founder and director of Rutgers' Animal Rights Law Project (quoted in July/August 2002 edition of Legal Affairs Magazine)

SUMMARY

Leash laws provide important safeguards for people, our pets, wildlife, and our parks, and as such they are widely supported as a cornerstone of responsible dog ownership. In the National Park System, leash laws have been effective in providing reasonable accommodations for people with pets while ensuring that our Nation's outstanding biological, cultural, historical, and aesthetic resources are not impaired or degraded. In the San Francisco Bay Area—home to the Golden Gate National Recreation Area, one of our nation's boldest conservation experiments—there is broad support for leash laws in our parks, with over 71% of the general public supporting the leash laws that protect the GGNRA.⁶

Unfortunately the administrators of the GGNRA have not been faithful to the National Park System's leash laws or the public's will to see these laws enforced. For over two decades, GGNRA administrators have pursued a policy of non-enforcement of leash laws at the park, ignoring validly promulgated pet management regulations and instead adhering to a voice control agenda in significant portions of the GGNRA. Perhaps most disturbingly, this policy was implemented without using informal or formal rulemaking procedures, depriving the general public of any opportunity to express its overwhelming support for leash law protections at our parks.

The adverse results of this illicit policy could hardly be more evident. The GGNRA's own records demonstrate that the voice control agenda has failed to protect people, our pets, wildlife, or the park. Park visitors have been bitten, chased, charged, and knocked to the ground; dogs have been lost, injured, and killed; imperiled wildlife and plants have been harassed and destroyed; and the very purpose for which the park was established has been put into jeopardy. The situation at the GGNRA is so extraordinary that it impedes efforts to obtain reasonable dog access in other parks, because the damage done to the GGNRA is not something other parks wish to replicate.

⁶ See ex. 107.

This petition documents many of the adverse impacts caused by the voice control agenda at the GGNRA. Yet because the GGNRA has failed to maintain adequate records of off-leash incidents at the park over the past two decades the actual number of incidents is believed to be far greater than what can be reported here. Fortunately both the documented and undocumented harm caused by the voice control agenda can be remedied through promulgation and enforcement of the National Park System's leash law on an emergency basis at the GGNRA. The National Park System's leash law is an effective method of ensuring that our pets have reasonable access to National Parks while preserving the parks unimpaired for future generations to enjoy. Unless and until the National Park Service promulgates and enforces the leash law at the GGNRA, the park's ability to protect people, pets, wildlife, and the park itself from the threats imposed by off-leash dogs will be greatly diminished.

PETITIONERS

Action for Animals is based in Oakland, California and has published a monthly calendar of events for Bay Area animal and environmental activists since 1984. During those same years, Action for Animals has spent considerable time and effort passing animal welfare legislation in the State Capitol, as well as on the local level. Much of the focus has been on the welfare of dogs and cats, in addition to animals in circuses, rodeos, and live animal food markets. Eric Mills, coordinator for Action for Animals, is on the Board of PawPAC, California's political action committee for animals. Action for Animals continues to work with a variety of animal welfare and environmental organizations on mutual concerns affecting animals, both wild and domestic.

Guide Dogs for the Blind ("Guide Dogs") is a nonprofit, charitable organization with a mission to provide guide dogs and training in their use to visually impaired people throughout the United States and Canada. Guide Dogs' dogs and services are free to those we serve, thanks to the generosity of donors and support of volunteers. Guide Dogs' headquarters and a training facility are in San Rafael, California—20 miles north of San Francisco. The organization is proud to have provided more than 10,000 dogs to people with vision loss since 1942. Guide Dogs' schools accept visually impaired students from throughout the United States and Canada for training with a guide dog. The organization offer follow-up services to each graduate of our program at their home or place of business for the lifespan of their dog. As part of this service, Guide Dogs surveys its graduates to better understand the challenges they may face in working with, protecting, and enjoying guide dogs. A significant challenge faced by our graduates is off-leash dogs. A 2003 survey conducted by a national guide dog user group indicated that 89% of graduates have had guide dogs interfered with by off-leash dogs, and 42% of graduates have had their guide dogs attacked by off-leash dogs. Because of this, Guide Dogs recommends that graduates avoid any place where off-leash dogs are known to roam.

Coleman Advocates for Children and Youth (“Coleman Advocates”) is a one-of-a-kind local community organization that works to transform San Francisco’s services and policies for children, youth, and their families in order to create a more family-friendly community. This includes ensuring that San Francisco’s parks remain a safe and vibrant place for children, youth, and families. In particular Coleman Advocates has been involved in ensuring that San Francisco’s parks remain open and accessible to families, children, and youth through leash law enforcement. Coleman Advocates has a representative on San Francisco’s Dog Advisory Committee, and is also involved in public education and outreach efforts to ensure that leash laws are complied with and enforced in San Francisco. Coleman Advocates is also involved in the proposed negotiated rulemaking process for reviewing the applicability of the leash law to lands within the GGNRA.

Environmental Quality for Urban Parks (“EQUP”) is comprised of individuals and organizations advocating for the environmental quality of urban parks and the natural areas of the City and County of San Francisco. EQUP believes that urban parks and natural areas are extensions of the living and recreational spaces for the residents of and visitors to San Francisco. EQUP promotes high and quantifiable standards for soil, water, air, flora, and fauna and assuring safe, clean, and fun human experiences in nature, both active and passive. EQUP has been particularly active in ensuring that leash laws are complied with in San Francisco to ensure that urban parks remain safe and inviting places for people to enjoy.

The Center for Biological Diversity (“the Center”) is a non-profit organization with offices in San Francisco, San Diego, and Joshua Tree, California; Silver City, New Mexico; Tucson and Phoenix, Arizona; Portland, Oregon; and Washington, D.C. The Center is dedicated to protecting rare and imperiled species and the habitats upon which they depend. The Center has been involved in the protection of imperiled species at the Golden Gate National Recreation Area (“GGNRA”) for at least 5 years, and has a particular interest in the protection of the imperiled West Coast distinct population segment of the western snowy plover. During this time, the Center has taken an active

role in ensuring that the leash law is enforced at the GGNRA, in part to protect imperiled shorebirds such as the snowy plover from harm. For example, on February 15, 2005 the Center submitted comments to protect critical habitats for the Snowy Plover within the GGNRA, in part to protect the species from constant harassment from off-leash dogs. The Center is also a potential member of the GGNRA's negotiated rulemaking process for reviewing the applicability of the leash law to lands within the park. The Center has also been involved in advocacy and public education efforts aimed at ensuring that reasonable regulations are put in place to ensure that endangered species and wild places at the GGNRA are protected from threats posed by off-leash dogs. The interests of the Center and its members in observing, studying, and otherwise enjoying the GGNRA and its wildlife have been, and will continue to be, harmed by off-leash dogs, and if the GGNRA fails to promulgate and enforce the National Park Service's nationwide leash law the Center's interest will continue to be impaired.

Golden Gate Audubon Society ("GGAS") is dedicated to protecting Bay Area birds, other wildlife, and their natural habitats. GGAS works to conserve and restore wildlife habitat, connect people of all ages and backgrounds with the natural world, and educate and engage Bay Area residents in the protection of our shared, local environment. Founded in 1917, GGAS is one of the oldest conservation organizations on the West Coast and has played a key role in protecting wildlife and their natural habitats throughout the Bay Area. The GGAS is a potential member of the GGNRA's negotiated rulemaking process for reviewing the applicability of the leash law to lands within the park. The GGAS has also been involved in advocacy and public education efforts aimed at ensuring that reasonable regulations are put in place to ensure that endangered birds and wild places at the GGNRA are protected from threats posed by off-leash dogs.

The Sierra Club San Francisco Bay Chapter is a volunteer-based organization with 40,000 Sierra Club members in the counties of Alameda, Contra Costa, Marin, and San Francisco. The San Francisco Bay Chapter and its groups sponsor numerous conservation issue committees and recreational activity sections, based on type of outing

or social group. As part of these efforts, the San Francisco Bay Chapter is focused on preserving the historic, aesthetic, recreational, and biological values at the GGNRA.

The California Native Plant Society is a statewide non-profit organization of amateurs and professionals. Our goals are to increase understanding of California's native flora and to preserve this rich natural heritage for future generations. The Yerba Buena Chapter encompasses San Francisco and northern San Mateo Counties and is named for the tiny fragrant mint *Satureja douglasii* found in this area. The Yerba Buena Chapter Activities are as diverse as our membership and range from conservation and habitat restoration to native plant gardening and photography.

The San Francisco League of Conservation Voters ("SFLCV") formed over twenty years ago to promote environmental protection through active participation in the San Francisco political system and to enhance the integrity of that political system for all San Franciscans. As such, SFLCV promotes conservation and protection of natural resources, environmental justice, and sustainability, as well as good government issues and political reforms.

The Dune Ecological Restoration Team ("DERT") is an existing, organized group of experienced Presidio restoration volunteers. We are comprised of many of the volunteers who were at the heart of the Crissy Field Restoration. DERT's mission is to "... restore, protect and expand the natural resources of the Presidio of San Francisco." Of late DERT has been requested by the Presidio Trust to assist them in their efforts on several restoration sites where the Army still has a role to play.

INTRODUCTION

Action for Animals, Guide Dogs for the Blind, Coleman Advocates for Children and Youth, Environmental Quality for Urban Parks, Center for Biological Diversity, Golden Gate Audubon Society, Sierra Club, San Francisco Bay Chapter, California Native Plant Society, Yerba Buena Chapter, San Francisco League of Conservation Voters, and Dune Ecological Restoration Team (hereinafter “Park Protection Organizations”) are non-profit organizations concerned with the welfare of companion animals, wildlife, people, and public parks. The National Park Service’s failure to implement and enforce validly promulgated pet management regulations at the GGNRA, particularly 36 C.F.R. § 2.15(a)(2), poses a significant threat to each of these concerns. The Park Protection Organizations submit this petition to request that the National Park Service immediately begin rulemaking to bring the GGNRA into compliance with nationwide regulations.

This petition explains how the GGNRA’s failure to enforce the leash law has resulted in dog attacks on people recreating at this National Park; explains how running dogs off-leash at the GGNRA—a park that contains none of the safeguards recommended by responsible animal welfare organizations to ensure the safety of off-leash pets—has resulted in needless and preventable injuries and deaths to many dogs in the park; explains how continued enforcement of the National Park System’s leash law at the GGNRA—which protects more federally listed species than any other unit of the National Park System in the continental United States⁷—is critically important to the continued existence of the threatened and endangered species in the park; and explains how the epidemic of off-leash dogs at the GGNRA has subverted the original values Congress sought to protect when it established the park over 30 years ago.

⁷ See http://www.nature.nps.gov/biology/endangeredspecies/Top_10_Parks.pdf. Only three National Parks contain a greater number of imperiled species: Haleakala National Park, Hawaii Volcanoes National Park, and Channel Islands National Park. Each of these parks is found on an island, which typically have more endemic species than their continental counterparts. This makes the diversity of life preserved at the GGNRA that much more unique and astounding.

While the National Park Service retains the discretion to ban dogs from the GGNRA altogether because of these threats, the Park Protection Organizations believe that such a drastic measure is not warranted. Instead—and consistent with the Nation’s laws and regulations that have been in place for nearly 60 years—the regulations allowing dogs in most of the park, so long as they are properly leashed, should be implemented and enforced. These reasonable regulations protect pets, wildlife, people, and the park so that the GGNRA’s exceptional resources will be preserved for present and future generations to enjoy.

ARGUMENT

I. Dogs roaming off-leash greatly impact other users of the GGNRA.

The GGNRA provides recreational opportunities for millions of Bay Area residents—and the Nation as a whole—that city, county, and state parks in California have been unable to provide. With so many potential users, the GGNRA has inevitably required compliance with reasonable safeguards to ensure that no park visitor will be harmed by another’s infringing use. The National Park Service’s leash law is a classic example of these reasonable safeguards: it provides accommodations to a variety of interest groups, while ensuring that no one’s recreational activities will be infringed.

However, because the leash law has not been enforced at the GGNRA, off-leash dogs have repeatedly injured people and have infringed on the experiences of many park users. Just over the past several years in the GGNRA, there have been dozens of incidents resulting in unwanted physical contacts between dogs and people.⁸ Many of these users have claimed that their experiences at the park have been ruined by off-leash

⁸ See, e.g., ex. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 (three attacks), 13, 14, 15, 16, 18, 19, 20, 21, 22, 92, 93, 25. At least thirteen of these contacts involved bites or other serious injuries to the victims. Ex. 3, 5, 7, 8, 12 (two attacks resulting in serious injuries), 19, 21, 22, 92, 24. At least three incidents resulted in children being knocked down. See, e.g. ex. 18, 20. In addition to directly injuring park users, at least two rangers have been injured rescuing dogs that ran over cliffs. Ex. 87.

dogs.⁹ The GGNRA has a duty to everyone living in the Bay Area to provide reasonable safeguards and protections to all users at the park, and this can only be done effectively through promulgation and enforcement of the National Park Service's pet management regulations.

A. Since September of 2000, dozens of off-leash dogs at the GGNRA have harmed park visitors.

Roaming off-leash dogs in the GGNRA are a significant hazard to GGNRA visitors, and unfortunately this hazard has caused many serious injuries to park users. Promulgating and enforcing the National Park Service's leash law at the GGNRA would eliminate nearly all of these attacks.

There have been thirteen serious physical injuries in the GGNRA in just the past several years that have resulted from unwanted contacts with unleashed dogs.¹⁰ In one attack, 14 year old Tina Phan was with friends at Rodeo Beach in the GGNRA when she encountered two unleashed dogs. When the dog's owner told Ms. Phan that the dogs were friendly, Ms. Phan began to pet one of them. She was then attacked and bitten on the face, receiving severe physical and emotional injuries, trauma, stress, and pain and suffering, and had to be taken by ambulance to Marin General Hospital for emergency medical treatment. Specifically, Ms. Phan received torn lips, severed cheek muscles and skin, and puncture wounds. Ms. Phan now has permanent scars on her upper and lower lips and surrounding cheeks, and has lost some sensation in that area of her face. She continued to suffer mental, physical, emotional, and nervous pain for at least one year after the incident. As a result of the attack Ms. Phan required physicians, surgeons, and

⁹ Ex. 15, 27, 28, 29, 25.

¹⁰ See, e.g., ex. 5 (dog bite victim who could not ascertain whether off-leash attacking dog had current rabies vaccination due to owner's absence); 7 (dog attacked horse causing injuries to horse and rider); 8 (dog attack causing facial injuries that required an ambulance); 12 (two attacks resulting in serious injuries, one of which caused a horseback rider to be trampled); 14 (victim's arm broken by dog jumping on her); 22 (horseback rider received ankle injury after being thrown from horse that was chased by dogs); 92 (off-leash dog bit two people while attacking their leashed dogs); and 24 (victim bitten by off-leash dog that attacked her leashed dog).

therapists, and her family incurred significant medical expenses from being forced to employ those medical professionals to care for her. Ex. 21.

Horses and their riders in the GGNRA have been attacked by off-leash dogs numerous times in the recent past, resulting in serious injuries to the riders and an injury to a bystander in the way of an escaping horse. During the past few years, there were at least ten reports or complaints of dogs chasing or attacking horses in the GGNRA, three of which involved injuries to the riders.¹¹ Ex. 32, 7, 30, 33, 12 (recounting four incidents, one of which is the same as ex. 7), 31, 22, 34. In one attack, a horseback rider and his horse were attacked by two off-leash dogs on the beach. The horse and rider both received serious injuries, the dog was euthanized later that day, and other riders were terrified by the attack. Ex. 7, 12. In another attack, a girl had to be helicoptered off the beach due to being trampled by a horse that was being chased by an off-leash dog. Ex. 30. In still another attack, the rider was barely able to avoid trampling people on the beach due to being chased by an off-leash dog. Ex. 31. Another rider received an ankle injury after being thrown from a horse that was being chased by an off-leash dog. Ex. 22.

Persons walking leashed dogs have been knocked down by unleashed dogs attacking leashed dogs, sometimes causing injury.¹² A man who regularly walks his leashed dogs at Crissy Field was knocked down by off-leash dogs attacking his leashed dogs, injuring his knee. Ex. 13. On a separate occasion while walking his leashed dogs, the same man was knocked down again by attacking off-leash dogs. Id.

¹¹ See, e.g., ex. 7 (horse and rider injured by attacking dog, dog put down); 30 (girl helicoptered off beach after being trampled by horse that was being chased by off-leash dog); 12 (four incidents, including two injuries to riders); 31 (rider barely avoided trampling people on beach while her horse was being chased by off-leash dog); and 22 (rider eventually fell off his horse and was trampled after horse was chased at length by off-leash dog).

¹² Ex. 6 (off-leash dogs knock over person walking leashed dogs), 13 (man knocked down twice by attacking off-leash dogs).

Three persons with leashed dogs were bitten by off-leash dogs that attacked their leashed dogs.¹³ A husband and wife were walking their dog on a leash along Milagra Ridge in the GGNRA when an off-leash dog “came out of the brush” and attacked the leashed dog. The husband was bitten in the upper thigh by the off-leash dog, and the woman was bitten in the finger. Ex. 92. Another woman was walking her leashed dog at Fort Funston when it was attacked by two off-leash dogs. The woman picked up her dog by the collar in an attempt to stop the altercation and was bitten on the leg by one of the attacking off-leash dogs.

Off-leash dogs, often playfully, jump on people who do not wish to experience that physical contact. In one incident, a woman received a broken arm from being jumped on by an off-leash dog at Fort Point. Ex. 14. Another park user was jogging at Fort Point when an off-leash dog suddenly darted in front of him, causing him to come “crashing down” onto his left hip and both kneecaps. The dog’s owner was 25 feet away at the time. Ex. 3. These incidents point out the fact that even “friendly” dogs can cause serious injuries if they are not leashed, as there is no evidence that these dogs meant any harm or were acting in a vicious manner.

¹³ Ex. 92 (man and wife walking leashed dogs bitten by off-leash dog attacking the leashed dogs); 24 (woman bitten by one of two off-leash dogs that attacked her leashed dog).



Crissy Field, May 24, 2003. An off-leash dog trips a jogger.

Because of their small size and limited strength, small children can be easily injured by off-leash dogs, and such injuries can traumatize a child long after the physical injuries are healed. Unfortunately there have been at least five reported incidents of unleashed dogs seriously threatening or knocking over small children at the GGNRA.¹⁴ This results in additional and unnecessary risks of injury for families with small children if they visit areas where dogs are allowed off-leash. To fairly balance the interests of all park users without prohibiting dogs completely, the GGNRA must promulgate rules requiring dogs in the park to be leashed.

¹⁴ Ex. 35 (off-leash dog trampled two year old); 36 (two-and-a-half year old twin girls assaulted and traumatized by off-leash dogs); 18 (children knocked down and terrified number of times by off-leash dogs); 45; and 20 (off-leash dogs knocked over children on Baker Beach).

B. Charging and growling off-leash dogs frighten visitors and hamper their ability to enjoy the GGNRA.

Since 2000 alone, there have been dozens of complaints or reports of unleashed dogs frightening people by charging or growling at them.¹⁵ One Crissy Field visitor was almost attacked by an off-leash dog. A “handler” had to get between the victim and the dog to prevent the victim from being physically harmed. The victim felt that his life was threatened. Ex. 47. In another incident, a jogger at Fort Funston was approached by two large off-leash dogs that were 100 yards from their owner. The dogs growled and barred their teeth at the jogger. Ex. 48.

There have been at least 13 reports of unleashed dogs causing general apprehension and fear of using the GGNRA.¹⁶ Most of these incidents involved large dogs or children, where apprehension of an attack causing serious injury is reasonable. In at least one instance the incident caused the visitors to leave.¹⁷ Ex. 45. In another instance, the victim was afraid for his or her life. Ex. 47. A parent reported that she is afraid to let her children “get out of arms reach because of all the dogs that are off leash [in the GGNRA].” Ex. 55. One parent had to abandon a seven month old in order to grab his two year old who was being charged by a large off-leash dog. Ex. 54. The

¹⁵ See, e.g., ex. 38 (off-leash Boxer approached visitor and growled at her continuously); 39 (park visitor chased for over 100 yards by off-leash dog); 40 (large off-leash dog ran straight at naturalist); 41 (park user scared by off-leash dog barking at him); 42 (victim frightened by 40 dogs, almost getting “taken out”); 43 (jogger charged by growling off-leash dog); 44 (park visitor approached “in a menacing way by large dogs”); 45 (off-leash pit bull ran up to children, ages two and five); 46 (park visitor “constantly frightened” by off-leash dogs); 47 (visitor felt life threatened by large off-leash dog); 48 (jogger approached by two large off-leash dogs that growled and barred their teeth at him); 49 (off-leash dogs at Stinson Beach approached children with food, parent feared that dogs might bite children attempting to get food); and 50 (ranger chased by off-leash dog near Battery Davis).

¹⁶ Ex. 51; 52 (visitor feels it is dangerous to walk at Crissy Field); 2; 53 (Crissy Field user with osteoporosis is afraid of large off-leash dogs that could cause a fall); 54 (Crissy Field user’s small child charged by off-leash dog); and 55 (parent afraid to let children “out of arms reach” at Ocean Beach due to off-leash dogs).

¹⁷ Again, it can be reasonably inferred that most people who have been frightened by dogs at the GGNRA do not file a report. They simply leave and do not return.

problem of dogs frightening people would not exist, or would at least be greatly lessened, if dogs were leashed.

C. Off-leash dogs are more likely to leave behind dog feces in the park, reducing the recreational value of the GGNRA.

There have been at least 17 complaints of dog walkers¹⁸ failing to clean up their dog's feces.¹⁹ There were also numerous complaints of negative park experiences due to odors from dog urine and feces.²⁰ An off-leash dog defecated directly in front of one family. Ex. 4. As happened in this incident, persons with off-leash dogs often fail to pay attention to their dog's actions and thus are unaware of defecations. Additionally, there is no way for a dog walker to even know whether his or her dog has defecated, let alone clean it up, if the dog is a good distance away due to being off-leash. Likewise, there is no way for a walker with multiple off-leash dogs to keep track of the dogs' defecations. On the other hand, a walker with a leashed dog will be aware of the dog defecating and thus will be able to clean it up.

¹⁸ Dog "walker" refers to anyone walking a dog or dogs, regardless of whether the walker is the owner.

¹⁹ Ex. 57; 58; 53; 4 (off-leash dog defecated directly in front of a family); 59; 60; 61; 37; 46; 17; 62 (off-leash dog defecated on trail at Crissy Field, walker refused to clean up); 63 (off-leash dog defecated on flower bed in Sutro Park, walker not present); 64 (off-leash dog defecated on Ocean Beach, walker merely covered feces with sand); 65 (off-leash dog with no walker present defecated on dunes on Ocean Beach); 66 (off-leash dog defecated on Ocean Beach, walker had no bag to clean it up); 67 (two off-leash dogs defecated on Ocean Beach, walker not present); and 62 (owner refused to remove feces).

²⁰ Ex. 69 (smell of dog urine and feces at Crissy Field is overwhelming); 4 (smell of dog feces at Crissy Field permeates the air); 70; and 71.



Fort Funston, July 6, 2005. An off-leash dog defecates at the park while its owner walks away, apparently oblivious to the dog's defecation.

Dog feces left on the ground not only ruins the park experience for many visitors due to its unsightliness and odor, it is also a health hazard. Ex. 60. As it is far more likely that walkers will clean up after their dogs if those dogs are leashed, dog feces left on the ground is one more reason that dogs should be leashed in the GGNRA.

D. Off-leash dogs in the GGNRA create other considerable dangers to people and otherwise ruin their park experiences.

There are at least two reports of unleashed dogs creating serious traffic hazards by running onto roads, endangering the animals and causing drivers to swerve in order to avoid hitting them. Ex. 72, 73. There were also two complaints of unleashed dogs potentially causing harm to disabled people. Ex. 11, 74. There was one complaint that an unleashed dog urinated on a visitor's "belongings" (Ex. 35), complaints of unleashed dogs attempting to take food or otherwise disturbing meals (ex.. 57, 69, 4, 15, 75), and a complaint that the presence of unleashed dogs in or near water prevents people from fishing (ex. 76).

E. Off-leash dogs prevent individuals with service animals from using the GGNRA.

Off-leash dogs pose a significant challenge to individuals who rely on service animals to help them enjoy the GGNRA. A 2003 survey conducted by a national guide dog user group indicated that 89% of individuals with service animals have had their guide dogs interfered with by off-leash dogs, and 42% of graduates have had their guide dogs attacked by off-leash dogs. Ex. 77. Because of this, organizations such as Guide Dogs for the Blind recommend that their graduates avoid any place where off-leash dogs are known to roam. Thus, the failure to enforce the leash law in the GGNRA has exposed those with service animals to a high-risk of interference or attack, and in most cases have precluded these individuals from enjoying the park altogether.

II. Running dogs off-leash at the GGNRA puts the welfare of dogs at great risk.

Like driving without a seatbelt, walking a dog off-leash is an activity that is inherently risky. While the general public is well attuned to the risks an off-leash dog poses to children, the elderly, and wildlife, few people understand that the greatest risk is often borne by the dog itself. At the GGNRA, this has been particularly true: literally hundreds of off-leash dogs have been lost, injured, or killed while roaming the park off-leash.²¹

The threats facing off-leash dogs in the GGNRA are numerous. High-speed automobile traffic along the Great Highway and Skyline Boulevard borders the park at Ocean Beach and Fort Funston—both of which are places where the National Park

²¹ This is likely an underestimate of the actual number of dogs harmed by off-leash dog walking since the inception of the GGNRA. This estimate is based solely on incidents that have been reported to the Park Service and subsequently published in an incident report. An unknown number of altercations are never reported to the Park Service; similarly an unknown number of reported altercations are not recorded in incident reports. Thus, it is likely that the actual number of off-leash dogs injured at the GGNRA is substantially higher than the conservative numbers used for the purposes of this petition.

Service's leash law is consistently ignored—and dogs have ran into traffic, been struck by cars, and killed while walking in the park off-leash.²² High, crumbling cliffs at Fort Funston and Mori Point pose a danger to off-leash dogs, and several dogs have fallen off of, or become trapped upon, the sides of these cliffs, requiring rescue.²³ At Crissy Field—and for that matter, throughout most of the GGNRA—the landscape is so large and topography so varied that it is not possible to consistently monitor a dog's off-leash behavior, and has resulted in numerous lost dogs, dog fights, and bites.²⁴ In some portions of the park dogs have even been preyed upon by wild coyotes. See ex. 82.

Because of the risks associated with running dogs off-leash, responsible animal welfare organizations around the country have established minimum standards and essential safeguards to ensure that dogs can engage in off-leash recreation without harm. These safeguards include (1) adequate fencing—that dogs cannot dig under or jump over—to ensure that dogs will not get lost or wander into dangerous situations; (2) an appropriate acreage so that—if fights or other emergency situations arise—dog owners

²² For example, on August 13, 2004, a dog was seen in the middle of Skyline Boulevard, causing traffic to swerve out of the way at speeds near 50 miles an hour. See ex. 78. The dog had escaped from its owner after being walked at Fort Funston, apparently without a leash. Id. (noting that no leash was found in the dog owner's possession). Remarkably the dog was returned to its owner unharmed.

However, a German Shepard/Standard Poodle mixed-breed dog was not so lucky. After being walked at Fort Funston, the dog was startled by a loud noise and ran away from its handlers. A few days later the dog was found dead on the side of the road, struck and killed by automobile traffic. Another off-leash dog owned by a Presidio YMCA member was hit by a park ranger driving an official vehicle. Ex. 72.

²³ For example, On December 11, 2004, Park Rangers rescued an off-leash dog that fell off the cliffs at Fort Funston, see ex. 79; on September 26, 2004, an off-leash Doberman Pinscher was rescued from the cliffs at Fort Funston, along with the dog's owner, see ex. 80; and on October 11, 2004, a yellow Labrador Retriever ran off the cliffs at Fort Funston chasing a ball, requiring another rescue attempt. See ex. 81. Additional examples are cited below.

²⁴ For example, on September 1, 2004, a Bull Terrier was lost at the South end of Baker Beach. See ex. 83; on November 16, 2004, a woman was cited for walking at least four off-leash dogs simultaneously at Fort Funston, one of which had previously bitten another dog at the park. See ex. 84. Additional examples are cited below.

can quickly reach their pets to address the situation; (3) consistent monitoring to ensure that poorly behaved dogs are removed before altercations occur; and (4) regular maintenance to ensure that the area remains a clean and healthy place for dogs to play.

However, none of these safeguards exist at the GGNRA. For example, there are no fenced off-leash areas in the park, and the primary areas where off-leash dogs are found—Ocean Beach, Fort Funston, and Crissy Field—are enormous areas that dog owners cannot easily monitor or rapidly cover if altercations arise. Absent these basic protections, it is not responsible to take a dog to the GGNRA off-leash.²⁵ As shown below, unfortunately, people continue to allow dogs to roam off-leash at the GGNRA, to the detriment of literally hundreds of dogs.

A. Off-leash dogs have been injured and killed at the GGNRA falling off steep cliffs.

The GGNRA contains several scenic properties with towering, wind-swept cliffs that descend steeply to the ocean below. These cliffs are one of the visual splendors of the park, and were mentioned by Congress on numerous occasions when the GGNRA was established. See, e.g., 1972 U.S.C.C.A.N. 4850, 4852. However, in many places these cliffs are also quite dangerous: their steep windward sides are often hidden from visitors approaching from the leeward side until the last possible moment. Numerous signs warning visitors to stay well away from cliff's edge are thus posted throughout the GGNRA.

However, dogs of course do not derive any benefit from these postings, and numerous visitors have watched in horror as their off-leash dog was injured or killed after bounding off the edge of a cliff. Indeed, on January 15, 2005, a park visitor was

²⁵ Indeed, the American Kennel Club, a nationwide organization that promotes responsible dog ownership and basic good manners for dogs through a “Canine Good Citizenship” program, actively promotes compliance with leash laws as a cornerstone of responsible dog ownership. See ex. 85.

recreating near the cliffs at Mori Point²⁶ with his 1 ½ year old mixed-breed dog. The dog was not wearing a leash. At approximately 2:00 p.m., the dog “ran off” the cliffs at Mori Point, falling nearly 200 feet to the beach below. Although Park Rangers initiated a rescue investigation almost immediately, it took rescuers nearly an hour to locate the dog. At the time it appeared that the dog was in “bad shape but still alive.” Unfortunately, by the time the dog was secured for transport and reached the top of the cliffs, “the dog was not moving and appeared to be lifeless.” See ex. 86.

Sadly this is not an isolated event at the GGNRA. In the year 2000 alone the GGNRA rescued 15 dogs—along with two dog owners who attempted to rescue their dogs but became stranded themselves—from the cliffs at Fort Funston, a popular but extremely dangerous place for some park visitors to flout the National Park Service’s leash law. See ex. 26. At least two of these dogs were injured, as were two Park Rangers, during the rescue attempts. Id.

Each of these incidents could have been prevented if the National Park Service had promulgated and enforced the reasonable leash law at the GGNRA. A simple leash would have ensured that these pets would not unwittingly bound over the edge of a cliff, protecting the dog’s life and keeping Park Rangers from placing their own lives at risk to rescue the off-leash dog.

B. Off-leash dogs have been involved in literally dozens of dog fights and dog bites at the GGNRA.

The GGNRA is renowned for its vast open spaces nestled into a cosmopolitan urban setting. While this open space is an essential component of the park, it presents an immense challenge to individuals who insist on allowing their dogs to roam the park off-leash. Unfortunately, too many dogs and their owners are not up to the challenge, and literally dozens of dogs have been harmed in physical altercations while roaming off-

²⁶ Mori Point is a relatively recent acquisition to the GGNRA located in Pacifica, CA that links the adjacent National Park lands of Sweeny Ridge and Milagra Ridge. Mori Point is clearly posted with signs explaining that pets must be leashed. See ex. 86.

leash. For example, on September 4, 2004, a Pit Bull was off-leash²⁷ at Ocean Beach when it attacked another dog and “locked onto it.” See ex. 88. Fortunately the Pit Bull’s owner was able to break up the altercation, but the bitten dog was bloodied and suffered injuries to its neck. Id. Just over a month later, a Shepherd-mix bit a Weimaraner, inflicting a wound in the Weimaraner’s hind leg that required stitches through several layers of muscle. Both dogs were off-leash, and the owner of the Weimaraner was so far from his dog that he did not even witness the attack. See ex. 89.

In one of the most brazen rejections of the National Park Service’s leash law, on February 6, 2005, the owners of a large Husky were cited for repeatedly allowing their dog to roam off-leash in the GGNRA near Mori Point—the very place where a dog plunged to its death a month earlier. The dog owner “lets the dog run until he is ready to come home,” and claimed that if “it was left alone it would come home.” See ex. 90. When asked to leash the dog by a Park Ranger, the dog owner asserted that the Park Ranger “did not know anything about [this] breed since they do what they want.” Id. The dog owner nonetheless attempted to leash the dog for over 10 minutes, but was unable to leash or verbally control the dog. The Park Ranger issued a citation to the dog owner, and warned that the dog could be impounded if it was observed running off-leash in the future. Id.

A few minutes later, while the Husky was still roaming off-leash in the area, the Park Ranger came across a couple walking their dog on-leash. The couple informed the Park Ranger that they “see that dog running around all the time” and that the Husky “disturbs [our] dog.” Moments later, as the couple continued their hike, the Park Ranger observed the Husky “chase [the couple] and their pet off the trail and into the bushes.” Eventually they escaped the husky, but the dog continued to roam off-leash when the Ranger left Mori Point. Id.

²⁷ It is not clear from the criminal incident report if the dog was purposefully taken off-leash or if the dog slipped its collar. In either event, the attack could have been prevented if the dog was properly leashed.

These off-leash altercations go on and on: on April 8, 2000, an off-leash dog bit a leashed dog while being walked at Crissy Field, sparking an angry argument between the owners of the two dogs.²⁸ See ex. 91. On September 15, 2004, an off-leash dog came out of the brush near Milagra Ridge and attacked an on-leash dog, biting the thigh and finger of the on-leash dog's owners. See ex. 23. The off-leash dog owner defended that her dog "was just playing." Id. On September 17, 2004, two off-leash pugs attacked and bit a 100-pound Labrador Retriever—which was also off-leash—and the Labrador's owner. See ex. 93. On February 13, 2004 two off-leash Boxers attacked a Scottish Terrier and a Giant Schnauzer while these dogs were being walked on-leash. See ex. 13. Indeed, in the past five years there have been at least 70 reported instances of off-leash dogs biting or attacking other dogs in the GGNRA. All of these incidents could have been prevented if the dogs were properly restrained on leashes; but this will only happen when the National Park Service promulgates and enforces responsible leash laws at the GGNRA.

C. Off-leash dogs pose a particularly acute risk to small dogs, which may be victimized by "predatory drift."

Because dogs have descended from wolves, they contain an innate instinct to hunt. Generally this instinct is expressed in benign activities such as chasing balls, retrieving sticks, or playing Frisbee. However, evidence is emerging that dogs can have more visceral predatory instincts triggered by other, smaller dogs, particularly when the

²⁸ At first blush it appears difficult to understand how a heated argument could occur when an off-leash dog bites an on-leash dog. After all, it is the failure to restrain the off-leash dog that increases the severity of the altercation. But in what is becoming a hallmark of irresponsible dog ownership at the GGNRA, people who allow their dogs to roam off-leash often blame the on-leash dog for being bitten. They argue that a leash, through physical restraint, causes a dog to act aggressively in a manner that an unrestrained dog would not. This argument, however, has been rejected by reputable animal welfare organizations for decades. Indeed, the Marin Humane Society recently published an article about so-called "leash aggression" explaining that it is caused by walking dogs off-leash—i.e., dogs become accustomed to doing whatever they like when off-leash and therefore throw an aggressive "canine tantrum" when they are put back on a leash. Dogs that are properly trained on a leash do not exhibit leash aggression. See ex. 94.

smaller dog panics or appears injured. This phenomenon is referred to as “predatory drift” because an otherwise well-behaved and obedient dog “drifts” into a predatory mode. According to the San Francisco SPCA, “predatory drift frequently results in serious injury or death” to the smaller prey-dog, because a bite inflicted during predatory drift incidents “is a much more serious kind of bite” than would normally occur in a regular dog fight. See ex. 95. The risk of a predatory drift event is so great that the San Francisco SPCA refuses to allow people to adopt dogs if they currently own a dog that is either less than half the size or twice the size of the new dog they wish to adopt. Id.

When dogs are allowed to roam off-leash, the consequences of predatory drift incidents become particularly dire. Without a leash or other physical restraint on the dog, it can become difficult or impossible to prevent the larger dog from attacking and killing the smaller dog. Small dogs are thus particularly vulnerable to people who walk their dogs off-leash, and thus at this time, with off-leash dogs roaming freely at the GGNRA, it is particularly risky to take a small dog to the park, even on-leash.

III. Running dogs off-leash at the GGNRA puts the welfare of wildlife at great risk.

The GGNRA contains over 100 rare or special status plants and animals. 67 Fed. Reg. 1424, 1428 (Jan. 11, 2002). In recognition of the critical importance the GGNRA plays in the conservation of these species, the park was designated as part of the Golden Gate Biosphere Reserve in 1989. Id. In addition, the park contains literally thousands of other species, many of which find refuge in the park as either localized residents or migrating visitors.

The GGNRA has a “heightened responsibility to preserve and protect those species and their habitat everywhere they occur within the GGNRA.” Id. Unfortunately, the increasing frequency and intensity of off-leash dog walking at the park has made it exceptionally difficult to ensure that imperiled species in the park are not jeopardized. Because they are physically unrestrained and cannot understand the sensitivity of the GGNRA’s parklands, off-leash dogs are more likely to initiate activities that harm or

harass wildlife. And once initiated, harmful or destructive behaviors are more difficult to correct than those of dogs that are on-leash.

These impacts are exceptionally acute to shorebirds such as the federally listed Pacific Coast distinct population segment of the western snowy plover (“snowy plover”). The snowy plover is a diminutive shorebird that is in a race against extinction. It is believed that fewer than 2,000 adult birds remain in this population. U.S. Fish and Wildlife Service, Western Snowy Plover Pacific Coast Population Draft Recover Plan, p.7 (2001) (available at <http://pacific.fws.gov/ecoservices/endangered/recovery/snowyplover/>) (hereinafter “Recovery Plan”). However, despite the fact that potential nesting habitat for the snowy plover exists in the GGNRA; despite the fact that between 20 and 85 snowy plovers reside at Ocean Beach during the winter; and despite the fact that snowy plover nests have been found on private lands north and south of the park’s boundaries, no snowy plovers are believed to be nesting within the Park. GGNRA, Draft Snowy Plover Management Plan, Ocean Beach, San Francisco, p. 14, 48 (1998). Ex. 96. While pre-nesting activity has occurred at Ocean Beach, the nests have all failed, most likely because of the “intense level of recreation activity on the beach.” Id. at 48. Of these recreational activities, “unleashed pets represent the most significant recreational threat to wintering snowy plovers . . . because of the prolonged and repeated disturbance created when they chase birds.” Id. at 21.

Snowy plovers are believed to be particularly sensitive to disturbance by dogs compared to other recreational activities.²⁹ Lafferty, Kevin D. Birds at a Southern California Beach: Seasonality, Habitat Use and Disturbance by Human Activity, 10 Biodiversity and Conservation 1949, 1960 (2001), See ex. 56. Unfortunately snowy plovers face nearly constant harassment by off-leash dogs at Ocean Beach. Park scientists estimate that snowy plovers are intentionally chased by dogs 400 times each

²⁹ Furthermore, off-leash dogs are about twice as likely to disturb snowy plovers as leashed dogs. Lafferty, Kevin D. Disturbance to Wintering Western Snowy Plovers, 101 Biological Conservation 315, 323 (2001), See ex. 68.

winter. Draft Snowy Plover Management Plan, Ocean Beach, San Francisco, at 22.

When flushed, snowy plovers must spend vital energy on “vigilance and avoidance behaviors at the expense of foraging and resting activity.” Recovery Plan, p. 58. This in turn results in decreased accumulation of the energy reserves necessary for snowy plovers to complete their annual migration and to successfully breed. Id. Off-leash dogs can thus negatively impact the survivorship and fecundity of individual birds by simply chasing them.

The Park Service’s incident reports of off-leash dogs harassing shorebirds are voluminous.³⁰ For example, on February 1, 2005, during the snowy plover’s residence at Ocean Beach, a Park Ranger witnessed an off-leash dog running along the high tide mark and “chasing birds from the flotsam as it went along.” See ex. 102. The Park Ranger contacted the owner of the dog, and after ascertaining that the owner was providing false information to him, informed the owner that the park had “concerns with pets off-leash within the Snowy Plover habitat area” and proceeded to write the dog owner a ticket. The dog owner then became “belligerent” and claimed that the Park Ranger was only issuing the citation “because [the dog owner] is Korean.” Id.

Similarly, on April 15, 2000, a large Doberman Pinscher was seen giving chase to a killdeer—another small shorebird—in Crissy Field’s designated Wildlife Protection Area, “almost catching it in its jaws.” The killdeer was attempting to defend its nest. See ex. 103. Half an hour later, another off-leash dog approached the killdeer and “almost

³⁰ To list a few: on November 21, 2004, a Park Ranger witnessed a dog-owner throwing a ball for his off-leash dog at Ocean Beach, which promptly ignored the ball but “started running after [a] bird instead, causing the bird to fly away.” See ex. 97. On October 26, 2004, a Park Ranger witnessed an off-leash dog run through a group of shore birds “multiple times, causing the birds to scatter, without the owner noticing.” See ex. 98. On January 22, 2002, an off-leash Golden Retriever growled and barked at a horseback rider, and then chased birds off the beach. See ex. 99. On January 9, 2004, an off-leash dog jumped into the Sutro Baths and began chasing after a bird, which had to take flight to avoid being caught by the dog. See ex. 100. And on October 10, 2004, a small off-leash dog chased a shorebird at Ocean Beach for approximately 50 yards. When the dog returned to his owner the dog received a treat. See ex. 101. It is unclear if the dog received the treat for chasing the bird or for returning to its owner.

grabbed [the] killdeer in [its] mouth” as the killdeer attempted to lead the dog away from its nest. The chase lasted over 30 seconds. Id. at 2. On April 17, 2000, the killdeer nest was found destroyed and the eggs gone, “with fresh dog prints and scuff marks atop [the] former nest area.” Id. at 3.

Unfortunately it is not only shorebirds that are being impacted by roaming off-leash dogs. The highly imperiled mission blue butterfly, and the habitats upon which the species depends, are also being impacted by off-leash dogs. See ex. 104. Protected marine mammals are regularly harassed and even bitten by off-leash dogs, and the endangered tidewater goby, as well as imperiled salmon, are also believed to be impacted by off-leash dogs. 67 Fed. Reg. 1428.

These impacts need not occur. Dogs and imperiled wildlife can coexist at the GGNRA, but only if the National Park Service’s reasonable leash law is promulgated at the GGNRA and enforced. See ex. 96 at 23 (Even the snowy plover may coexist with dogs but only “if significantly higher levels of [leash law] compliance can be achieved”). Because the snowy plover begins returning to the GGNRA in July, it is that much more imperative that the National Park Service initiate emergency rulemaking to ensure that the leash law can be enforced at Ocean Beach throughout the winter season.

IV. Allowing dogs to roam off-leash at the GGNRA is inconsistent with the purposes and goals of this National Park.

The GGNRA is one of our country’s boldest conservation experiments. Congress squeezed the nation’s largest urban park between some of the most expensive real estate in the country, a refuge for wildlife and city dwellers alike.

The experiment has largely worked. The GGNRA has become synonymous with the high quality of life San Franciscan’s hold dear, intertwined with our identity as much as the Golden Gate Bridge and the 49ers. It props-up property values, provides recreational opportunities for thousands of visitors, and creates an oasis for a variety of wildlife species.

The boldness of Congress' urban national park experiment was evident from the inception of the GGNRA. Congress noted that, although regional and local parks such as Golden Gate Park and the Berkeley Hills provide much needed recreation space for the Bay Area, there was still a need to bring the values preserved in the National Park System closer to people. Congress found that "many families in this urban impacted area do not enjoy the affluence which would enable them to take advantage of the outdoor recreation areas located even as close as the Point Reyes National Seashore," and that while the GGNRA "will not add significantly to the open lands in the city, [] it will ensure its continuity as open space for the use and enjoyment of present and future generations of city-dwellers." 1972 U.S.C.C.A.N. 4850, 4851-52.

The cornerstone of Congress' national urban park experiment was to ensure that the GGNRA was not managed as if it were another city playground or ball field. Instead, Congress commanded that the GGNRA be preserved "as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area." 16 U.S.C. § 460bb (emphasis added). As such, Congress further commanded that recreational and educational uses "shall" only occur if they are "consistent with sound principles of land use planning and management." Id.

The legislative history makes clear that Congress suspected, but did not mandate, that certain uses may be compatible with sound management of the park. For example, Congress suggested that park visitors might "fly kits [sic], sunbathe, walk their dogs, or just idly watch the action along the bay" while visiting Crissy Field. 1972 U.S.C.C.A.N. at 4852. However, contrary to assertions made by irresponsible dog owner groups advancing a voice control agenda, nowhere in the National Park Service's Organic Act, the act establishing the GGNRA, or in the relevant legislative history did Congress suggest that off-leash dog walking should be allowed: indeed, given that Congress must have been aware that the National Park System had a nationwide regulation requiring all dogs to be on-leash while visiting National Parks at the time the GGNRA was created, the only reasonable conclusion from this portion of the legislative history is that Congress

contemplated people walking their dogs on-leash while visiting Crissy Field. See Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990) (“We assume that Congress is aware of existing law when it passes legislation.”); United States v. Hunter, 101 F.3d 82, 85 (9th Cir. 1996) (Ninth Circuit “presume[s] that Congress is knowledgeable about existing law pertinent to the legislation it enacts.”) (internal quotations omitted).

Nor does the fact that Congress established the GGNRA as a National Recreation Area, rather than a National Park, change the applicable principles of land management. As a preliminary matter, Congress mandated that the GGNRA be managed in accordance with the National Park Service’s Organic Act, 16 U.S.C. § 1 et seq., as amended and supplemented. 16 U.S.C. § 460bb-3. The Organic Act itself requires that all units of the National Park System be managed “to conserve the scenery, and the natural and historic objects, and the wildlife therein and . . . leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. Furthermore, in the past when the National Park System attempted to manage Recreation Areas in a less protective manner, Congress amended the Organic Act to prohibit such artificial distinctions:

[T]he national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States . . . ; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; . . . and that it is the purpose of this Act to include all such areas in the System.

16 U.S.C. § 1a-1. (emphasis added). As pointed out in Bicycle Trails Council v. Babbitt, 1994 U.S. Dist. LEXIS 12805 (N.D. Cal. 1994) (aff’d, 82 F.3d 1445 (9th Cir. 1996)), a case that dealt specifically with management at the GGNRA, “[the National Park Service] interpreted Congress’s amendments to the Organic Act to be clear in the message that [the National Park Service] . . . was to manage all units of the park system so as to effect the purpose of the Organic Act—primarily resource protection.” Id. at *18.

The National Park Service has already determined, through notice and comment rulemaking, that the entire National Park System must have reasonable leash laws enforced in order to effect the purpose of the Organic Act. Yet the GGNRA has failed to enforce the leash law for decades, resulting in great degradation to the park. It is precisely for this reason that the National Park Service must promulgate and enforce the leash law at the GGNRA. The essential purpose of Congress' urban national park experiment at the GGNRA is to bring wildness closer to people. The GGNRA gives people who otherwise cannot or will not drive to Death Valley or Yosemite an opportunity to be exposed to things more than human. This of course applies to those without the fiscal resources to travel to our distant National Parks, but it also provides opportunities for the over-worked and time-stressed individuals who, because of life's daily grind, cannot scrape the time together to visit far-away places. For these individuals and the rest of us living in civilization, urban national parks such as the GGNRA provide an oasis of hope for a sustainable society. As Congress recognized, National Parks, as opposed to city, county, regional, or even state parks, are uniquely positioned to make this vision become reality because of their greater resources, their relative insulation from political whims, and their less-parochial outlook.

National Parks such as the GGNRA cannot accomplish this purpose while simultaneously accommodating all forms of recreation enjoyed by the public without restriction. The National Park Service has thus recognized that the role of the National Park System is to "provide opportunities for forms of enjoyment that are uniquely suited and appropriate for the superlative natural and cultural resources found in the parks" and that the park service will "defer to local, state, and other . . . organizations to meet the broader spectrum of recreational needs and demands." 67 Fed. Reg. at 1427. In San Francisco, the GGNRA's reliance on the city of San Francisco to provide off-leash recreation opportunities is well founded. The City of San Francisco now contains approximately 27 designated off-leash areas throughout the city, and in 2002 the city adopted a final "Dog Policy" for expanding off-leash recreation into even more portions of the city. Available at http://www.parks.sfgov.org/site/recpark_index.asp?id=2181.

V. The situation at the GGNRA has been exacerbated since the National Park Service's leash law was formally invalidated.

As shown above, off-leash dogs in the GGNRA are having significant impacts on the welfare of people, our pets, wildlife, and the park itself. The Park Service has been making a valiant attempt to protect dogs, wildlife, and the park from off-leash dogs—and in particular to protect park users from the outlandish activities highlighted above—but the task has become almost Sisyphean. Irresponsible dog owners continuously flaunt responsible animal welfare organization's recommendations for ensuring the safety of pets and wildlife, and law enforcement officials have been unable to dedicate enough resources to ensure that the leash law is complied with throughout the park. When the park is able to enforce existing laws, Park Rangers are often presented with false information or met with intimidation tactics to try and subvert the GGNRA's enforcement process.

Unfortunately recent court decisions have made it even more difficult for the park to cite dog owners who allow their dogs to roam off-leash and impact park resources. For example, on December 12, 2004, a Park Ranger was attempting to explain the importance of the leash law to six dog walkers who had their dogs off-leash. These individuals “surrounded” the Park Ranger and attempted to debate the Park Ranger about the Magistrate's Order in an “openly hostile demeanor.” See ex. 105. In order to prevent the contact from escalating “into a fracas requiring additional units, [the ranger] departed the area.” Id. Similarly on March 1, 2005, Park Rangers found a dog owner with three off-leash dogs sitting off-trail in sensitive butterfly habitats, only a few hundred yards away from posted signs that contain leash law requirements and information about the endangered mission blue butterfly. See ex. 106. When told of the infraction, the dog owner became argumentative and stated “[w]e beat you at Fort Funston, and at Crissy Field, we don't have to leash our pets.” Id. He continued, “the leash law was abolished and only applied to a few parks.” Id.

These confrontational attitudes are making it difficult for Park Rangers to protect park resources from the impacts noted above. But they are also making it more difficult

for park users to request reasonable accommodations from irresponsible dog owner groups. Unless and until the National Park Service promulgates and enforces the leash law at the GGNRA, the park's ability to protect people, pets, wildlife, and the park itself from the threats imposed by off-leash dogs will be greatly diminished.

CONCLUSION

For the foregoing reasons, the Park Protection Organizations request that the National Park Service promulgate and enforce 36 C.F.R. § 2.15(a)(2) at the GGNRA. Due to recent court decisions that have unexpectedly eliminated these reasonable protections for the first time, the Park Protection Organizations request that the regulation be promulgated on an emergency basis, and that leash law enforcement begin no later than 60 days from receipt of the petition.