

NEGOTIATED RULEMAKING COMMITTEE FOR DOG MANAGEMENT IN THE GGNRA

The first meeting of the Negotiated Rulemaking Committee for Dog Management in the Golden Gate National Recreational Area (GGNRA) will be held on Monday, March 6, 2006 in Building A, Lower Fort Mason, from 4 pm to 7 pm. The meeting is open to the public. There will be time allotted for public comment at the end of the meeting. SFDOG will post periodic updates – and links to documents and information provided by sub-committees – when possible. The best way to keep track of the negotiations is to attend the public meetings of the Committee. We will post announcements of meeting times and agendas as they become available, or call the GGNRA Negotiated Rulemaking Information Line at (415) 561–4728 and ask to be added to the meeting mail list.

There are three postings in the Federal Register concerning the Negotiated Rulemaking process. They can be seen at <http://parkplanning.nps.gov/projectHome.cfm?projectId=12791> Click on Documents and Links, and then click on each document to download them. You can also call the GGNRA's Negotiated Rulemaking Information Line (415-561-4728) to request copies of the notices.

SFDOG will participate in the negotiations, designed to determine where dogs will be allowed off-leash in the GGNRA. In theory, the negotiated rulemaking process seems a reasonable way to deal with a controversial issue. Representatives of various affected stakeholders sit down together and try to hash out a compromise that all can live with. The negotiated rulemaking process requires that the people in the room negotiate in good faith, that they honestly listen to one another's views and re-examine their own over the course of the negotiations. Only time will tell if the process will actually work the way it's supposed to in this case.

Note that no one is asking that dogs be allowed off-leash everywhere in the GGNRA. We want off-leash recreation to continue to be permitted on the less than 1% of land in the GGNRA where it has been permitted for decades, and that areas for off-leash recreation be included when new land is added to the GGNRA. Off-leash recreation should not be held to a higher standard than any other recreational use. The City of San Francisco donated nearly all of its beaches to the GGNRA, with the understanding that traditional recreational uses of those areas would be preserved. We ask that the GGNRA continue to honor the promises and obligations it made in the Memorandum of Understanding it signed with the City of San Francisco in 1975.

In 1979, the GGNRA Citizens Advisory Committee, at the request of the National Park Service, developed a Pet Policy that addressed where in the GGNRA dogs could be off-leash (it also addressed feral cats). The Citizens Advisory Committee held public hearings and received extensive public comment, before determining that there would be no adverse impact on the environment or on other park users if dogs were allowed off-leash on about 1% of GGNRA land. This included Fort Funston, Crissy Field, Ocean Beach, Baker Beach, and other primarily beach areas.

Beginning in 1991, various attempts were made to convert the off-leash areas designated in the 1979 Pet Policy to on-leash only. The GGNRA began to close off some areas – parts of Fort Funston, parts of Ocean Beach – to off-leash recreation (and frequently to all park users, not just those with dogs), citing the presence of endangered or threatened species (e.g., the snowy plover on Ocean Beach) or because of newly planted native species.

In 2000, after accepting two closures without complaint, Fort Funston Dog Walkers sued the GGNRA when it closed even more parts of Fort Funston without first soliciting public input. FFDW won the suit, which forced the GGNRA to solicit public comment on the closure. The results were overwhelmingly against the closure (about 1,100 letters and 5,000 signatures on petitions opposing the closure, 400 pre-printed postcards and letters supporting it). Still, the GGNRA elected to close even more land than had originally been planned to all recreational users (not just those with dogs).

In January 2001, the GGNRA Citizens Advisory Committee placed on their agenda their intent to void the 1979 Pet Policy as “illegal.” National Park Service regulations require dogs to be on-leash only in national parks. Therefore, the GGNRA argued, they never should have allowed them off-leash. Over 1,500 people attended the meeting to protest the move, most waiting outside in the pouring rain for several hours (because there was no more room inside) to voice their opposition to the plan. Eight members of the Board of Supervisors and representatives of local State Assemblymembers urged the Advisory Committee not to rescind the 1979 Pet Policy. The Committee took no action.

Several days later, in February 2001, the GGNRA quietly voided the 1979 Pet Policy. There was no period of public comment, no public hearings. In March 2001, the GGNRA announced its intent to begin an Advanced Notice of Proposed Rulemaking (ANPR), to determine if off-leash recreation can be allowed in the GGNRA (note that this wording assumes the activity to be “illegal”). In April, 2001, the GGNRA posted “Dogs must be on-leash” signs on nearly all GGNRA lands where dogs had traditionally been off-leash (and where they were legally allowed according to the 1979 Pet Policy). Enforcement of leash laws began and citations began to be issued.

In January 2002, the ANPR was published in the Federal Register, followed by a 90-day period of public comment (which ended in April 2002). Public comments ran 6-to-1 in favor of off-leash recreation (16,319 to 2,541, including personal comments, form letters and postcards, and petitions). More than half of the comments against off-leash recreation came from people who not only do not live in San Francisco, but also do not live in the state of California.

In October 2002, GGNRA Superintendent Brian O’Neill announced the National Park Service decision to proceed with the negotiated rulemaking process. Selecting professional mediators to conduct the negotiations, and identifying stakeholders and their selection of representatives to the negotiations moved at a glacial pace.

In the meantime, citations continued to be issued for people who had their dogs off-leash in those areas where they had been allowed to be off-leash in the 1979 Pet Policy. In 2004, three people who were cited for walking their dogs off-leash at Crissy Field challenged their tickets. Note that these people did not sue the GGNRA, as has been claimed by some. The three were defendants in a criminal case.

In December 2004, US Magistrate Judge Elizabeth D. LaPorte dismissed the tickets, ruling that because the GGNRA did not solicit adequate public comment before rescinding the 1979 Pet Policy, as required by federal statute whenever a policy change will be either significant or highly controversial, the 1979 Pet Policy was still in effect. The GGNRA appealed LaPorte's ruling.

In June 2005, US District Court Judge William Alsup upheld the lower court's ruling. Judge Alsup agreed that, because of the lack of public notice and comment before it was rescinded, the 1979 Pet Policy was still in effect. Because that policy allowed dogs to be off-leash at Crissy Field, he dismissed the tickets.

During the summer of 2005, three years after announcing they would begin the rulemaking process the GGNRA finally published (in the Federal Register) the names of the people proposed to represent stakeholder groups in the negotiations.

In February 2006, the GGNRA also announced their plans to conduct an Environmental Impact Statement (EIS) for a Dog Management Plan for the GGNRA. For more on this, see <http://parkplanning.nps.gov/projectHome.cfm?projectId=11759>, click on Documents and Links to get to the Federal Register posting about the EIS. The federal notice about the EIS cites as a reason for it to occur: "A history of a dog management policy that has been inconsistent with NPS regulations has resulted in controversy and litigation, compromised visitor and employee safety, affected visitor experience and resulted in resource degradation." (page 9147, February 22, 2006) This statement would seem to presuppose the result of the EIS. How we ensure the EIS process is conducted in an open and fair manner remains to be seen.

It is also not clear from the Federal Register notice if the EIS will fold into the Negotiated Rulemaking decision process, or vice versa. This is one of several issues that remain unclear as the negotiations begin.

The negotiations will take time. The GGNRA estimates up to a year, but so far each step has taken longer than anticipated. The Committee was created for two years. SFDOG will participate and negotiate in good faith. We hope others, especially those who oppose dogs in the GGNRA, will do the same.

Should the negotiations fail to come to a compromise, the GGNRA has said it will go through an Agency Rulemaking process, in which the GGNRA will hold public hearings and solicit public comment on where dogs should be allowed to be off-leash. At the end of this public process, the GGNRA will decide where dogs can be off-leash. It could also decide to rescind the 1979 Pet Policy, ending off-leash recreation in the GGNRA.

Because they would go through a public process before rescinding the Pet Policy, the GGNRA would avoid the legal problems that Magistrate LaPorte and Judge Alsup cited in their decisions.

Note that there are some within the dog community who argue that the negotiations are a waste of time, that the GGNRA has already made up its mind to ban off-leash dogs and the negotiations are mere window dressing to make that decision appear more palatable to the public. They point out that the GGNRA is under no mandate to accept any results of the negotiations. In the interests of keeping the dog community fully informed about off-leash recreation in the GGNRA, we post the URL for Ocean Beach DOG, hard-working off-leash advocates who are pursuing strategies outside the negotiated rulemaking process: <http://www.oceanbeachdog.home.mindspring.com> Their website has a great deal of background information about dogs and the GGNRA.

SFDOG will try to keep everyone updated on what's happening with the negotiations to the best of our ability given the GGNRA's restrictions on what participants can say and do. The official website for information on the negotiations is: <http://www.nps.gov/goga/pets/regneg/> but it has not been updated since November 2005.

Another GGNRA website is:

<http://parkplanning.nps.gov/projectHome.cfm?projectId=12791>

Another website that will post information on the negotiations is Crissy Field DOG:

<http://crissyfielddog.org/news.html>