Comments

on

The GGNRA Draft

Environmental Impact Statement

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Introduction

The legacy of Golden Gate National Recreation Area (GGNRA) management is one of duplicity, broken promises, and broken laws. This DEIS as a means to modify recreational usage is no exception. This DEIS is not a good faith effort by the NPS/GGNRA to resolve conflict, but a thinly veiled ploy to eliminate off-leash recreation from the GGNRA entirely. The conflict is actually one of legislative intent: the GGNRA/NPS desire to manage this Golden Gate National Recreation Area as a National Park, while the enabling legislation and the will of the people assert the management should reflect the unique requirement we have for recreational access (as mandated by Congress) here in the GGNRA.

With respect to this 2400 page DEIS, the Federal Register states: *"This plan will promote the following objectives: preserve and protect natural and cultural resources and natural processes, provide a variety of visitor experiences, improve visitor and employee safety, reduce user conflicts, and maintain GGNRA resources and values for future generations."* There is no mention of recreation or its value in this Recreation Area. With the addition of a "Compliance-based Management Strategy" the GGNRA has cleared the way to incrementally eliminate the presence of dogs in the GGNRA.

This is a long-standing battle we have waged; the GGNRA takes away recreational access, and the citizens turn to the Federal Court to have access reinstated. It has been a colossal waste of time and money, and a hardship for the citizens because not only are we battling for our right to access; we are also paying for both sides of the debate. I intend to review the objectives and content of this DEIS and the history of the management of the GGNRA. At its conclusion I think you will agree there are only three possible resolutions to this situation. San Francisco City and County will be required to formally take back those properties they can, or Congress will be required to implement a Section Seven Special Regulation (over the objections of DOI/NPS/GGNRA) to ensure recreational access as was originally intended when this National Recreation Area was created. The third option would be to transfer the GGNRA to another Federal agency such as the Forest Service, where sound principles of land use and planning are actually implemented as a part of their management policy. Should these properties remain under the management of NPS/GGNRA, there must be strict oversight by Congress to ensure sound principles of land use planning and management are implemented permanently as they have not been implemented up until now.

This Agency Action Is Unlawful

Before examining the contents of this DEIS, I must make the fundamental point that the decision to proceed with this DEIS itself is unlawful. The enabling legislation requires the GGNRA to utilize sound principles of land use planning and management. Accepted practice would be illustrated by the Rattlesnake National Recreation Area and Wilderness (RNRAW) which produces an ***annual monitoring report***. The report assesses current recreation trends, needs, and impacts, and thereby serves as a tool for long-term management of the RNRAW. The following is taken from the Introduction of the Report for 2009:

> "This is the seventeenth annual monitoring report for the Limits of Acceptable Change (LAC) based Management Direction for the Rattlesnake National Recreation Area (NRA) and Wilderness (RNRAW), which was approved in December 1992. Monitoring is the final

step in the LAC planning system. It is an ongoing, continuous process and is instrumental for evaluating management effectiveness and sustainability of resource values and conditions.

The LAC process recognizes that wilderness conditions change. Wilderness areas are dynamic systems with many forces continually affecting the landscape. These forces of change include people and their impacts, fire, insects and disease, invasive species and many others. It defines what conditions are desirable and how to achieve or maintain those conditions. Based on citizen involvement, laws and regulation, it identifies what changes are acceptable rather than attempting to prevent change.

Monitoring is based upon the indicators and standards outlined in the LAC direction. The indicators and their specific standards provide methods of measurement to effectively monitor factors and area wide issues. Refer to the December, 1992 Limits of Acceptable Change Based Management Direction for the RNRAW for a more complete discussion of the LAC process.

The factors monitored during the 2009 field season include: education, use and users, trails and roads, Wilderness characteristics, vegetation, vandalism, wildlife, fire, goals and policies. Refer to Table 1 for a complete description of the factors, indicators and standards for each opportunity class (OC)."

In contrast, in 2006 when this DEIS was announced on the Federal Register, I made a Freedom of Information Act Request to provide the data, documents, and/or Staff Report which substantiated the GGNRA's claim that there was controversy over the dog policy, compromised visitor and employee safety and resource degradation which warranted this DEIS. The GGNRA's response merely stated: "*The Staff Report and other documents you seek do not exist at this time*". An appeal to the Department of the Interior regarding this FOIA request elicited the following response after several letters: "*Since the Department has not made a determination on your appeal within the time limits set in the FOIA, you may seek judicial review under 5 U.S.C. 552(a)(4)(B). However, we hope that you will delay filing the lawsuit so that the Department can thoroughly review the issues in your appeal and make a determination. We appreciate your patience to this point and the Department will make every effort to reach a decision on your appeal as soon as possible.*" This letter is dated August 8, 2006. There has been no written response as of yet.

The lack of data or any documentation to support the assertions used as justification to proceed with this Environmental Review violates Federal Law as it renders this agency action **arbitrary, capricious and an abuse of discretion**. Accordingly, this agency action, findings and conclusions should be set aside as prescribed by the Administrative Procedure Act, 5 U.S.C. 706 (2)A.

Why is it significant that other Recreation Areas perform annual monitoring of resources and the GGNRA does not? Why is monitoring so important? As stated in an NPS publication, "Monitoring the Condition of Natural Resources in US National Parks" (http://science.nature.nps.gov/im/monitor/docs/Monitoring_Park_Condition.pdf) the purpose of monitoring is as follows:

> The overall purpose of natural resource monitoring in parks is to develop scientifically sound information on the current status and long term trends in the composition, structure, and function of park ecosystems, and to determine how well current management practices are sustaining those ecosystems. Use of

monitoring information will increase confidence in manager's decisions and improve their ability to manage park resources, and will allow managers to confront and mitigate threats to the park and operate more effectively in legal and political arenas.

Additionally, a review of NPS online resources reveals that there is an entire infrastructure set up to guide and facilitate NPS properties in their monitoring duties, "Vital Signs Monitoring" (http://science.nature.nps.gov/im/monitor/index.cfm)

A subsection of the aforementioned web site (Program Goals) discusses the goals of park monitoring:

> "Natural resource monitoring provides site-specific information needed to understand and identify change in complex, variable, and imperfectly understood natural systems and to determine whether observed changes are within natural levels of variability or may be indicators of unwanted human influences. Thus, monitoring provides a basis for understanding and identifying meaningful change in natural systems characterized by complexity, variability, and surprises. Monitoring data help to define the normal limits of natural variation in park resources and provide a basis for understanding observed changes; monitoring results may also be used to determine what constitutes impairment and to identify the need to initiate or change management practices."

As discussed above, it seems impossible that GGNRA management would undertake a management change as proposed in this DEIS without any evidence of monitoring as a means to identify the alleged impairment.

Further exploration of the NPS "Vital Signs Monitoring" Resources Online (see http://science.nature.nps.gov/im/monitor/ProgramGoals.cfm) reveals:

> National Park managers are directed by federal law and National Park Service policies and guidance to know the status and trends in the condition of natural resources under their stewardship in order to fulfill the NPS mission of conserving parks unimpaired (see Summary of Laws, Policies, and Guidance).
>
> More recently, the National Parks Omnibus Management Act of 1998 established the framework for fully integrating natural resource monitoring and other science activities into the management processes of the National Park System. The Act charges the Secretary of the Interior to *"continually improve the ability of the National Park Service to provide state-of-the-art management, protection, and interpretation of and research on the resources of the National Park System"* ,and to *"assure the full and proper utilization of the results of scientific studies for park management decisions."* Section 5934 of the Act requires the Secretary of the Interior to develop a program of *"inventory and monitoring of National Park System resources to establish baseline information and to provide information on the long-term trends in the condition of National Park System resources."*

Clearly, the failure of GGNRA management to conduct any consistent monitoring of the resources of the GGNRA is a violation of Federal law. The more fundamental problem is that this DEIS highlights the fact that GGNRA management is in persistent violation of the enabling legislation for this park property. GGNRA management can provide no monitoring report to substantiate visitor use patterns or conflicts, no documentation of degradation of the Recreation Area resources, as well as no documentation as to whether resource degradation is inevitable or under the control of management prior to proposing these management changes. Consequently,

there have been no mitigations to address problems as they arise. In truth, were the GGNRA's claims of degradation of resources even valid (I contend they are not), a case could be made that any degradation of the GGNRA property is due to GGNRA management's failure to adhere to accepted practice regarding land use planning and management. How is it equitable for the GGNRA to abolish recreational access as a remedy to a problem they cannot document and when they have demonstrably violated the principles of sound land use planning and management?

The fact is the National Park Service has had a shift in ideology, and this new ideology is in direct conflict with the promises the NPS made to citizens to persuade them and their governing bodies to turn over the properties that make up the GGNRA. Had the GGNRA monitored this property conscientiously, their findings would not have justified initiating this DEIS in the first place.

This Agency's Management Is The Source Of Controversy And Conflict

It is the GGNRA's refusal to abide by the enabling legislation for this park that has created controversy and user conflict. I am obligated to go through a chronological history of the GGNRA because the history provided in this DEIS is inaccurate in many respects.

History

The historical backdrop presented in this DEIS could be politely classified as "revisionist". A more accurate description is as follows:

In March 1963, the President's Recreational Advisory Council released "Policy Circular No. 1." In it, the council laid out a new outdoor recreation policy for all agencies, with the key stipulation that all National Recreation sites be accessible at all times for "all-purpose recreational use." To make the point even clearer, it asserted that agency management of National Recreation Areas should be more responsive to recreational demands than to other such considerations as "preserving unique natural or historical resources." (Administrative History of Point Reyes National Seashore) The NPS was left with little choice but to heed these stipulations.

In response, the NPS advisory board decided to create three separate operating units and management goals for traditional NPS natural or Wilderness areas, Historical Monuments, and for the broad category of Recreation Areas. Secretary of the Interior Udall made official the new categories in his July 10, 1964, memorandum to new NPS director George B. Hartzog, Jr. Udall outlined the prescribed management policies for the recreational area category: "Outdoor recreation shall be recognized as the dominant or primary resource management objective." Resource use would emphasize "active participation in outdoor recreation in a pleasing environment." (Administrative History of Point Reyes National Seashore)

In 1970 Secretary of Interior Walter Hickel moved to create the GGNRA "to bring parks to the people", (U.S. Department of Interior News Release, September 14, 1970.) Congress established the GGNRA on October 27, 1972, stating:

> "In order to preserve for public use and enjoyment certain areas of Marin and San Francisco Counties, California, possessing outstanding natural, historic, scenic, and recreational values, and in order to provide for the maintenance of needed recreational open space necessary to urban environment and planning, the Golden Gate National Recreation Area (hereinafter referred to as the "recreation area") is hereby established. In the management of the recreation area, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall utilize the resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management. In carrying out the provisions of this subchapter, the Secretary shall preserve the recreation area, 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. Sec. 460bb.)

In addition to a generic statement of purpose as appears in most national park statutes, it is important to note that Congress included two "specific provisions" unique to the GGNRA.

First, the park was established "*to provide for the maintenance of needed recreational open space necessary to urban environment and planning*."

Second, the GGNRA statute imposes a unique limitation on NPS's discretionary power for "*management of the recreation area"* by providing that the *"Secretary of Interior...**shall** utilize the resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management."*

While composing a list of enumerated recreational activities contemplated for the new urban park would be virtually impossible, legislative history reveals what Congress meant by "needed recreational open space necessary to urban environment." "It is a well-recognized principle of statutory construction that contemporaneous interpretations of dated legislation are ordinarily given considerable deference when its meaning is later questioned." (National Rifle Association of America v. Potter 628 F. Supp. 903, 911 (D.C. Dist. Col. 1986).) In addition to sun bathing, picnicking, horse riding, swimming, hiking, and fishing, offleash dog walking was specifically addressed during Congressional hearings. For example, a letter by a seven year old child from San Francisco petitioned the Chairman for a dog park where she could play and socialize her dog: "*Dear Congressman Roy Taylor: I want a park so I can play in the park and my sister wants a park too and so my dog can play with another dogs and my Mom wants a park so she could take my dog out to play. I hope you will make a park. Elizabeth Linke*." (Hearings Before the Subcommittee on Interior and Insular Affairs, House of Representatives, p. 414.)

Consistent with the trend at the time, Congress explicitly stated the GGNRA was to be a "*new national urban recreation area which will concentrate on serving the outdoor recreation needs of the people of the metropolitan region*." The GGNRA's mandate was to "*expand to the maximum extent possible the outdoor recreation opportunities available in this region*." (1-1. R. Rep. No. 1391, 92nd Cong., 2nd Session (1972).)

At the time, all municipal beaches and adjacent city parks considered for inclusion in the park were dedicated to off-leash recreation. (It has been the law of the State of California since its inception in 1850 that the State holds the tidelands in trust for its citizens. In decisions from both the United States and California Supreme Courts, the uses encompassed by the public trust doctrine have been held to include "general recreational" activities.)

When voting for Charter Section 7.403-1(a) authorizing the transfer of the City parks, the citizens of San Francisco were told that *"the transfer of these lands is a technical resolution allowing the City and County of San Francisco to transfer city lands to the Golden Gate National Recreation area…a national urban park established in 1972 by Congress to preserve 34,000 acres of land and water in San Francisco and Marin for recreational use by all citizens."* The first GGNRA Superintendent William J. Whalen made specific promises to San Francisco voters that the new NRA would retain historical recreational access (including off-leash recreation) should they vote to include SF park properties in the GGNRA.

Although the city was interested in having its parks included in the new urban park, it wanted to retain jurisdiction over them; surrendering total control to the federal government was not part of the original deal. San Francisco Mayor Joseph Alioto told the United States House Hearings that the city parks proposed for inclusion in the GGNRA *"should remain under the jurisdiction of the San Francisco Recreation and Park Commission"* (April 6, 1972). The Department of Interior clearly understood that the *"taxpayers of San Francisco had the foresight to preserve these recreational areas and the willingness to pay for their support"* and *"naturally wish to retain some voice in their operations and administration consistent again with an overall master plan."* (February 14, 1972). The San Francisco Recreation and Park Commission adopted Resolution No. 9030 which provides, "[t]hat this Commission, believing that inclusion of these properties is vital to the success of the concept of bringing parks to the people, recommends that they remain under the jurisdiction of the Recreation and Park Commission of the City and County of San Francisco." (May 30, 1972).

Aware that certain unique restrictions were included in the enabling statute requiring the NPS to maintain "recreational open space necessary for urban environment and planning", San Francisco adopted the "technical resolution" authorizing the transfer of City parks for "recreational use by all citizens."

The Board of Supervisors adopted Resolution No. 364-72, which provides:

1. "the City and County of San Francisco desires to maintain and improve the recreation facilities available to the residents of San Francisco on the aforementioned property owned by the City and County of San Francisco located within the Golden Gate National Recreation Area;"
2. "The City and County of San Francisco desires to participate in the planning, administration and operation of the Golden Gate National Recreation Area;" and
3. "this Board of Supervisors endorse a policy of cooperation and administration and management of the Golden Gate National Recreation Area including the property owned by the City and County of San Francisco located within the Recreation Area. (June 9, 1972)".

Before the transfer occurred, an Agreement/ Memorandum of Understanding (MOU) between San Francisco and the Federal Government gave the City Planning Department jurisdiction to review NPS plans within formally owned City lands after their incorporation into the GGNRA. Department of City Planning memos from the 1970s confirm that the MOU requires that all NPS proposals be submitted to the Department for review.

As minutes of the San Francisco City Planning Commission, dated December 5, 1974 confirm, the resolution to transfer the property was approved on that day because the Commission was

told: *"the deed transferring jurisdiction over the parcel to the Federal Government would specify that the property should be used for Open Space and Recreational purposes only."*

Even as the properties were being secured, the National Park Service was moving in the direction of abolishing the National Recreation, Historical Monuments, and Wilderness Management categories. The General Authorities Act of 1970 began the legal unraveling of the three management categories. Officials in Washington assured field operations that these changes were administrative and "not intended to create significant changes in the management of parks." (Administrative History of Point Reyes National Seashore)

But in reality, the move was being made to reverse the priority of recreation. We shall now track the progression of this move to place "preservation/restoration" over recreation.

Considering his representations to SF voters and elected officials, it seems duplicitous at best that in 1977 the same William J. Whalen (recently promoted to Director status in the NPS) officially dismantled the three-category distinctions which provided different management for National Recreation Area category properties (which included the GGNRA). To answer the obvious question as to how the priority of recreation was still to be honored, it was said the promulgation of new regulations were developed to reflect "the actual Management practices which have become established in park areas, either through legislative requirements or policy decision." (Memo from Associate Director, Management and Operations to Directorate and Field Directorate, 12/22/77).

Congress bolstered NPS Director Whalen's decision to further de-emphasize the Recreational preference in the Redwoods Act of 1978, which included an amendment to the 1970 General Authorities Act declaring the "regulation of the various areas of the National Park System, . . . shall be consistent with and founded in the purpose established by the [Organic Act] to the common benefit of all the people of the United States."(Administrative History of Point Reyes National Seashore)

Acting on the promise to the city and the mandate to manage park resources "consistent with sound principles of land use planning and management" for the "maintenance of needed recreational open space necessary to urban environment and planning", NPS developed the 1979 Pet Policy through the auspices of the Citizens Advisory Commission which designated certain areas for voice control in San Francisco and Marin counties. The development of this policy was initiated "because the ordinary guidelines outlined in the Code of Federal Regulations do not really apply in an urban area. People and their animals have been visiting the park for too long to apply an all-inclusive arbitrary policy."

Documents relating to development of the policy leave no question that NPS and not the Citizens Advisory Commission developed the off-leash policy for GGNRA. In October, 1977, Rolf Diamont, GGNRA "Environmental Coordinator" prepared a memo proposing a "Draft Dog Policy for San Francisco Unit." His memo enumerated the following guidelines:

1. "No regulation, verbal or written, should be attempted that cannot be reasonably and consistently administered."
2. "Dog regulations should be different for different areas of the park reflecting public needs and attitudes as well as urban geography and our capabilities."
3. "When we discourage or restrict dogs in any area, whenever possible, an alternative site where dogs are allowed should be suggested.

Each precept is consistent with "sound principles of land use management". To facilitate public review of the proposed policy, the Citizens Advisory Commission established a Pet Policy Committee to conduct hearings on the proposed policy. A briefing memo for the record prepared by the Staff Assistant to General Superintendent dated April 3, 1978 acknowledged that 36 CFR 2.8 leash law was "applicable to all properties of GGNRA". NPS realized a special regulation would have to be prepared. "A deviation from this regulation will require the writing of a special regulation specific to GGNRA". The leash law was not enforced while the new policy was being developed: *"Enforcement of the CFR has been non-existent until a dog policy and possibly a special regulation is established."*

The 1979 Pet Policy was established as the official off-leash recreation policy for the GGNRA as required by the enabling statute and the promise made to the city. NPS issued press releases of the official off-leash policy (Lynn Thompson memo to Coalition For San Francisco Neighborhoods, 10/17/78). Again, NPS told San Francisco this policy was developed because the "[e]xisting federal regulations' were not "a viable situation in an urban area".

By summer of 1979, GGNRA had initiated the process to bring federal regulations into compliance with the enabling legislation and the off-leash policy. A draft special regulation 7.97(b) was submitted to the Western Regional Director NPS for approval. Department of Interior Solicitor Ralph Mihan reviewed the draft proposed regulation and found "the proposed regulation to be legally acceptable", but advised the formal request should include a "authorship statement or a statement of significance" which "must be included within the rulemaking package before its transmittal to Washington." (Ralph Mihan, Solicitor to Western Regional Director, Re: Proposed Rulemaking Golden Gate National Recreation Area (Pets), 7/23/79). The draft proposed regulation in fact contained a statement of significance, the Section Seven Amendment was being proposed *"because large portions of land formerly used as pet exercise areas have been included with Golden Gate National Recreation Area."* (1/9/80 Regional Director memo to Superintendent GGNRA: Re: Proposed Special Regulation - Pets USPROD00386-8). The proposed regulation also called for public comment "within 30 days of the publication of this notice in the Federal Register."

Although this 1979 Pet Policy was consistent with the statutory mandate for the GGNRA to provide "needed recreational open space necessary for urban environment" and required by the promise made to San Francisco when city property was donated to the park, officials in Washington D.C did not finalize the Section Seven Special Regulation to bring their regulations into compliance with the enabling statute. Subsequently the 1979 Pet Policy guidelines were incorporated into the 1982 Natural Resources Management Plan as Appendix C. The duplicity lay in the GGNRA's intentional failure to designate the 1979 Pet Policy as a Section Seven Special Regulation—the type of regulation referred to in the Memo dated 12/22/77 referenced above. The significance of this will be apparent in 2001.

Finally, Director William J. Whalen's 1980 NPS Management Policies produced a systemwide change in overall policy and management. The clear directive was preservation first, recreation second."(Administrative History of Point Reyes National Seashore)

If you look at some of the GGNRA's management activities, you have cause to wonder if the GGNRA really wants us in "their park". For example, in 1989 the GGNRA, under the supervision of Brian O'Neill, signed on to a biosphere habitat program entitled "Man and Biosphere Habitat Programme" ("MAB" or "MAP"). One would be hard pressed to find a

philosophy in greater conflict with the recreational priority of the GGNRA than that of Peter Bridgewater, Secretary of the MAB/MAP Programme, who has said, *"Earth would be a better place if we had no people."* The year of 1989, when the Biosphere program began, saw visitors drop by over 5 million in this Recreation Area that otherwise had shown steady growth in recreation visitors since they started tracking visitors in 1973.

In 1992 Bill Clinton's newly appointed Secretary of the Interior, Bruce Babitt, had a different vision for the National Parks System. A new anti-recreation ideology pervaded Park Service policy. Despite the legislative mandate that sound land use principles be applied" to maintain needed recreational open space necessary for urban environment", NPS summarily closed off in August of 1996:

- over 15 miles off-leash recreational space in San Francisco
- 11 miles of trail in Presidio
- 2.2 miles at Ocean Beach
- Lands End
- Fort Miley

The aforementioned Diamont memo confirms that all closures affected areas used for this recreational activity before the park was established : Ocean Beach, Fort Funston, Sutro Heights Park, Phelan Beach, Lands End, and Baker Beach. Diamont's comments concerning Ocean Beach explain why that closure has been unsuccessful:

> "Ocean Beach: no rules should be enforced here. Ocean Beach is too large and too accessible to control dogs. It would be a logistical nightmare for the Park Service to try. Also lifestyles are such on Ocean Beach, that an inflexible NPS here could hurt our improving relations with visitors."

The DEIS states: "Since the 1990s, the San Francisco Bay Area population and overall use of GGNRA park sites have increased, as have the number of private and commercial dog walkers. At the same time, the number of conflicts between park users with and without dogs began to rise, as did the fear of dogs and dog bites or attacks."

With respect to the claim in the DEIS that use of the Recreation Area had increased, two points can be made. First, increased usage over time was anticipated when this National Recreation Area was created. The House Report No 92-1391 made clear that the GGNRA would be confronted with problems in San Francisco that would require careful planning because of the high volume year-round visitation:

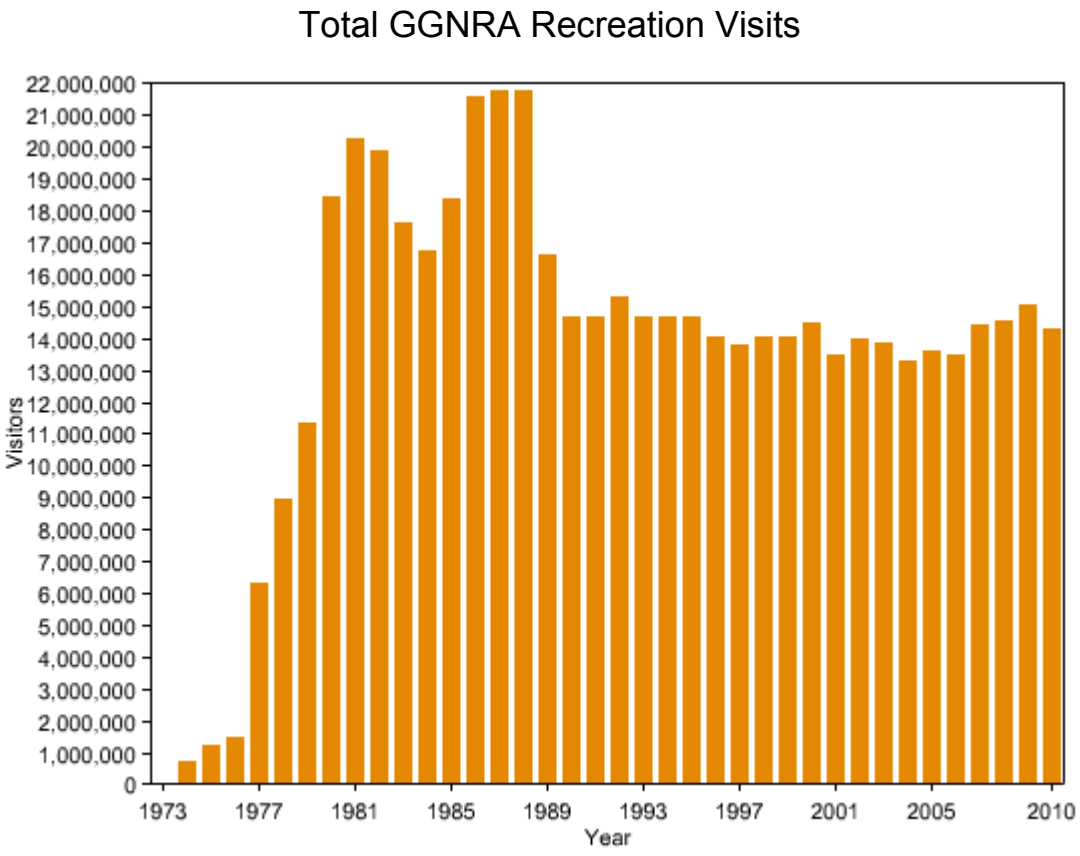
> "As a national urban recreation area, this new component of the national park system will be confronted with problems which do not frequently occur at other national park and recreation areas. Great numbers of people can be expected to use the area-particularly those portions located in San Francisco County." (pg. 11)

There is no surprise here. Therefore, abandonment of the principles outlined in the enabling legislation, in an absence of appropriate monitoring of resources, as proposed in this DEIS is not an acceptable management reaction to increased usage of the GGNRA by citizens.

Second, the number of park visitors has NOT increased dramatically over the past 20 years. In fact, in 1987 the GGNRA experienced its greatest number of visitors, coming in at 21,767,176

recreational visitors. According to NPS statistics, in 2010, the total number of recreational visitors was 14,271,503, down about 34% from 1988.

Consider also that in the past 20 years the GGNRA acreage has almost doubled in size, and expanded into San Mateo County. This puts a far larger population in direct proximity to the Recreation Area, yet the visitor numbers are down dramatically. Users of the GGNRA will tell you that this DEIS is just a reflection of the management priorities that Brian O'Neill started with his Biosphere commitment that have systematically denied and discouraged access for the public to this Golden Gate National Recreation Area.



Golden Gate NRA

Year	Recreational Visitors
1973	42,600
1974	702,300
1975	1,196,900
1976	1,457,600
1977	6,300,200
1978	8,960,938
1979	11,321,127
1980	18,421,773
1981	20,279,789
1982	19,897,389
1983	17,604,551
1984	16,731,706
1985	18,355,365
1986	21,582,368
1987	21,767,176
1988	21,759,271
1989	16,656,896
1990	14,650,213
1991	14,695,771
1992	15,309,338
1993	14,695,771
1994	14,695,771
1995	14,695,771
1996	14,043,984
1997	13,803,382
1998	14,046,590
1999	14,048,085
2000	14,486,065

2001	13,457,900
2002	13,961,267
2003	13,854,750
2004	13,270,547
2005	13,602,629
2006	13,486,824
2007	14,397,313
2008	14,554,750
2009	15,036,372
2010	14,271,503
Total	**522,102,545**

(From http://www.nature.nps.gov/stats/park.cfm?parkid=296)

Evidence the issue was really a new ideology is the fact that the GGNRA experimented with changing its name to Golden Gate National Parks (GGNP) in an effort to convince citizens of the Bay Area that the paramount mission of the NPS is to bring the wilderness to the City. On August 28, 2001, the GGNRA Advisory Commission meeting was opened by Chair Rich Bartke as a regular meeting of the Advisory Commission to the National Parks in the Golden Gate Area. Mr. Bartke was asked to correct that reference by a concerned citizen, Michael Goldstein. Mr. Goldstein stated publicly in his comments to the Commission that this was not the first time he had addressed the Commission on this topic and that this practice of omitting the word "recreation" from the Park's name had become a matter of public concern. This runs counter to the intentions of the City of San Francisco and its citizens who had been promised that the GGNRA will remain an urban recreation area.

The DEIS further states: During this period (2001), it was clarified by the Department of Justice, U.S. Attorney, and the Department of the Interior Solicitor Offices that the voice-control policy then in effect at Fort Funston and other locations in the park was contrary to NPS regulations. In a public meeting in January 2001, the Commission acknowledged that the voice-control policy was contrary to 36 CFR 2.15(a)(2), prohibiting off-leash dogs in national parks, and therefore illegal and unenforceable.

Now we see the significance of the GGNRA/NPS decision to refrain from making the 1979 Pet Policy a Section Seven Special Regulation. By doing so, they were able to exercise **"plausible deniability"**. In reality, this is just one more example of how the GGNRA has dealt in bad faith with the public whom they, in theory, serve.

The public and elected officials were incensed at the GGNRA change in policy. Indeed, in 2001, a Resolution was approved by the San Francisco Board of Supervisors, detailing the history of the relationship between the City, the public and the GGNRA. The Resolution (and its findings) is so significant that it is quoted in full below:

RESOLUTION for S.F. Board of Supervisors Vote [Urging GGNRA to delay leash enforcement -- Passed on December 10, 2001]

Resolution requesting the National Park Service to delay enforcing, in the San Francisco parks situated in the GGNRA, 36 C.F.R. 2.15, requiring pets to be on leash in national parks, until the ANPR process has been completed.

WHEREAS, In 1975, the City and County of San Francisco transferred Fort Funston and other City-owned park lands to the federal government to be included in the Golden Gate National Recreation Area (GGNRA), to be administered by the National Park Service (NPS); and,

WHEREAS, The statute creating the GGNRA (16 U.S.C. Section 460bb) specifically states that the GGNRA was established to provide for the maintenance of needed recreational open space necessary to the urban environment and planning and requires that the Secretary of the Interior "utilize the resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management;" and,

WHEREAS, Former Charter section 7.403-1(a), as approved by the voters, required that the deed transferring any City-owned park lands to the NPS include the restriction that said lands were to be reserved by the Park Service "in perpetuity for recreation or park purposes with a right of reversion upon breach of said restriction;" and,

WHEREAS, When Fort Funston and other City-owned parks were transferred to the federal government, a federal regulation existed requiring all pets to be on leash in federal parks, yet the NPS chose not to enforce this regulation in the San Francisco City parks; and,

WHEREAS, In April 1978, the GGNRA stated its position that "the ordinary guidelines outlined in the Code of Federal regulations do not really apply in an urban area," and that "people and their animals have been visiting the park for too long to apply an all-inclusive arbitrary policy;" and,

WHEREAS, The Superintendent of the GGNRA in the spirit of this statement developed a draft pet policy and submitted it to the GGNRA Advisory Committee for further review and public hearings; and,

WHEREAS, In September of 1978, after extensive public hearings and public surveys, the Advisory Commission proposed guidelines for a pet policy for the San Francisco Unit of the GGNRA, designating Fort Funston, Lands End, Ocean Beach, Fort Miley, Baker Beach, and Crissy Field for continued off-leash recreation; and,

WHEREAS, On October 6, 1978, GGNRA General Superintendent Lynn Thompson accepted these designations with the following comment: "As you know, the Advisory Commission approved the proposed guidelines for a pet policy in the San Francisco Unit of the GGNRA at their September 27 meeting," and she continued, "We are accepting in total the Commission's recommendations for each of these areas;" and,

WHEREAS, On February 24, 1979, the GGNRA finalized the pet policy for both San Francisco and Marin County, establishing areas where pets could be exercised off-leash; and,

WHEREAS, In 1982, the 1979 Pet Policy was incorporated into the GGNRA Natural Resources Management Plan as Appendix C; and,

WHEREAS, On July 8, 1992, NPS Western Regional Director Stanley Albright assured U.S. Senator John Seymour that "there is no change in the 1979 Pet Policy which provides the visitor of walking one's dog off leash"; and,

WHEREAS, By letter dated July 8, 1992, Western Regional Director Stanley Albright also assured U.S. Senator Cranston that there would be no change in the 1979 Pet Policy; and,

WHEREAS, On February 5, 1999, Pacific Western Regional Director John Reynolds assured U.S. Senator Dianne Feinstein that the "GGNRA has adopted a pet policy that is more liberal than the regulations enforced at other national park sites throughout the United States, where pets are required to be leashed at all times and are, for the most part, excluded from all but developed areas," and the letter continued, "[The] GGNRA

has, with the assistance of the park's Advisory Commission, established a pet policy that allows some opportunity for visitors to enjoy a few designated areas as voice control areas where pets are allowed off-leash;" and,

WHEREAS, On March 19, 1999, GGNRA Superintendent Brian O'Neill stated to U.S. Congresswoman Nancy Pelosi, the "GGNRA has adopted a pet policy that is more liberal than pet regulations at other national park sites throughout the country... certain areas of the park have been designated as voice control areas where pets are permitted off-leash;" and,

WHEREAS, In November of 2000, the GGNRA Advisory Committee attempted to revoke the 1979 Pet Policy, but failed due to a point of order; and,

WHEREAS, On January 23, 2001, over 1,500 people attended the GGNRA Advisory Committee meeting to protest revocation of the 1979 Pet Policy, nine San Francisco supervisors spoke, and both Senator Speier and Assemblyman Shelley sent letters to be read by their representatives; and,

WHEREAS, The Advisory Committee recommended that the GGNRA hold meetings with stakeholder groups within the next 120 days to resolve the issue, and to not change leash enforcement for this period; and,

WHEREAS, The Advisory Committee at this meeting did not vote on the Pet Policy; and,

WHEREAS, Rather than hold stakeholder meetings, the GGNRA received permission from Washington for a more formal process called Advance Notice of Proposed Rulemaking (ANPR), but this process has not begun; and,

WHEREAS, In November, 2001, the GGNRA began to aggressively enforce the leash requirement at Fort Funston, sending teams of law enforcement rangers for 2 to 3 hour segments, and issuing tickets for walking dogs off-leash without initiating the ANPR process in good faith with the public; and,

WHEREAS, Off-leash recreational users believe that off-leash recreation is legal at Fort Funston, and they agreed to go through the ANPR process and further rulemaking in order to obtain a special rule for the GGNRA that specifically recognizes that off-leash dog-walking is permissible in certain GGNRA parks; and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco finds that the recent enforcement of 36 C.F.R. 2.15 is in contravention to the representations made to the public at the Citizens Advisory Committee meeting on January 23, 2001; now, therefore, be it

RESOLVED, That the Board of Supervisors of the City and County of San Francisco hereby requests the National Park Service not to enforce, in the GGNRA parks which were donated to the federal government by the City and County of San Francisco, 36 C.F.R. 2.15, which requires that all pets be on leash in federal parks, until the ANPR process has been satisfactorily completed; and, be it

FURTHER RESOLVED, That the Board of Supervisors of the City and County of San Francisco hereby requests the NPS to advise the Board as to the status of the ANPR process; and, be it

FURTHER RESOLVED, That the Clerk of the Board of Supervisors shall send copies of this resolution to the offices of United States Senator Dianne Feinstein, United States Senator Barbara Boxer, Congresswoman Nancy Pelosi, Congressman Tom Lantos, State Senator John Burton, State Senator Jackie Speier, Assemblywoman Carole Migden, Assemblyman Kevin Shelley, GGNRA Superintendent Brian O'Neill and the National Park Service.

Unfortunately, the GGNRA ignored the Resolution, and in 2002 instituted a ban on off-leash recreation and began ticketing dog guardians for recreating with their dogs off-leash. As mentioned in the Resolution, pressure from the City of San Francisco to take back the management of these properties in the courts, as well as the Federal court confirming other violations of law the GGNRA had been guilty of, caused the GGNRA to invite the public to petition the Federal government for the ability to create a Section Seven Special Regulation for off-leash recreation in the GGNRA (ANPR).

The public submitted thousands upon thousands of requests to the Federal government, and a Federal Panel reviewed the history and legal agreements for the GGNRA. The Federal Panel that reviewed the applicable authorities, policies, planning guidelines, and information on Park setting, natural and cultural resources, and public safety developed the following observation (among others*):*

> *"GGNRA parkland is immediately adjacent to San Francisco, one of the most densely populated urban centers in the United States of America, and manages a significant portion of recreational open space in the city. Most residents do not have 'backyards' or access to private open space to exercise their pets off-leash. Residents rely on the close proximity of GGNRA open space for this purpose."* (ANPR Decision Documents; Federal Panel Recommendations, supra, Section 3, emphasis added.)

> *"…*[the GGNRA should] *clearly distinguish between on-leash, off-leash, and no pet areas to avoid management and public confusion."* (Federal Panel Recommendation to the General Superintendent on Proposed Rulemaking for Pet Management at Golden Gate National Recreation Area, Section 4 ("Federal Panel Recommendations"). p. 11 (Revised November 7, 2002). [See http://www.nps.gov/goga/pets/anpr/pdf/federal_panel_recommendation.pdf.]

The Federal Panel concluded in its November 2002 recommendation to the GGNRA it would be appropriate to create a Section Seven Special Regulation to allow off-leash recreation in the GGNRA.

At that time, the GGNRA could have instituted the 1979 Pet Policy as the Section Seven Special Regulation for the GGNRA. Instead, they decided to institute Negotiated Rulemaking (NR) to create a new pet management policy for the GGNRA.

Prior to NR starting, in 2004, a Federal magistrate reviewing tickets issued to dog guardians determined that the 1979 Pet Policy had been illegally rescinded, and re-instated the 1979 Pet Policy as the controlling law for off-leash recreation in the GGNRA

Again, even with the legal protection of a court order, the GGNRA chose not to institute the 1979 Pet Policy as the new Section Seven Special Regulation. Instead, the GGNRA appealed the Federal Court's decision. In 2005 the GGNRA lost their appeal. **The 1979 Pet Policy was affirmed as the controlling pet policy in the GGNRA.**

..

Judge Alsup of the Federal Court noted in his decision affirming reinstatement of the 1979 Pet Policy in the GGNRA, his findings regarding the history of pet management in the GGNRA:

> **"In sum, for more than twenty years, the GGNRA officially designated at least seven sites *for* off-leash use. This was not accidental. It was a carefully articulated, often studied, promulgation. The responsible GGNRA officials in 1978 and thereafter presumably believed they were acting lawfully. Even now, the government concedes that the GGNRA had full authority at all times to relax the general leash rule at the GGNRA but argues it could have done so, *at* least after 1983, only via a "special regulation." In other words, the agency allegedly used the "wrong" procedure back in 1978 (and thereafter) even though a "right" procedure to reach the desired result was available and could have been used. The government has not revealed its internal justification for following the "wrong" process.**

> **Whatever it was, the justification was abandoned in 2002 with the two-word explanation that it had been "in error." With this *ipse dixit,* the NPS wiped away two decades of policy, practice, promulgations, and promises to the public."** (*United States v. Barley, Order Of Affirmance, supra, p. 5.)*

The GGNRA continued to flout both recommendations that it solicited from the Federal Panel and the Court decision to reinstate the 1979 Pet Policy as the law governing pet management in the GGNRA. In 2007, Daphne Hatch, Chief of Natural Resources Management and Science for the GGNRA was quoted in the San Francisco Chronicle as saying: ***"Ocean Beach without the people is an incredible habitat. But people think of it as a sandbox or their backyard."***

While Superintendent O'Neill gratuitously stated that the Court "**effectively** reinstated the 1979 Pet Policy", the GGNRA refused to acknowledge the reinstatement of the 1979 Pet Policy in the manner prescribed by law, 36 C.F.R. Section 1.7(b). There was no written designation of the reinstated off-leash properties; indeed, the GGNRA used this murky situation to continue to harass and ticket off-leash dog-walkers in areas that were off-leash pursuant to the 1979 Pet Policy and amendments thereto. In addition, the GGNRA, in violation of 36 C.F.R. Section 1.7(a)(4), persisted in ignoring the Court's ruling and misinforming the public. For example, on the NPS website, under the heading, "Dogwalking Information and Regulations", a statement dated June 8, 2005, proclaims: "Due to the recent court ruling, this information is under review and will be revised shortly." A brochure found online at the NPS website entitled, "Enjoying the Park with your Dog", advises readers that, "Where dogs are permitted, Federal law requires that they be on a leash, not to exceed six feet in length, in all units of the National Park System."

In addition, for over a year, GGNRA management refused to change the signage in the Park to reflect the Court's ruling in derogation of 36 C.F.R. Section 1.7(a)(1)(4). For photo documentation of the illegal signage, see http://oceanbeachdog.home.mindspring.com/id8.html. This illegal and confusing signage clearly created user conflict and was detrimental to the safety and enjoyment of those visiting the GGNRA.

I would add as an aside at this point, objectives listed in this DEIS were the desire to enhance Visitor experience and Safety, enhanced compliance with Dog Rules, and Park Operations. It should be evident from this point in GGNRA history, that the greatest obstacle to fulfilling these objectives was and still is GGNRA Management itself.

Despite the fact that GGNRA management had been given permission to create a Section Seven Special Regulation for off-leash recreation in the GGNRA; when the Court reinstated the 1979 Pet Policy, the Superintendent refused to make the 1979 Pet Policy a Section Seven Special Regulation. He instead instituted a Negotiated Rulemaking (NR) process that was conducted in bad faith, was unlawful and did not reach consensus. The GGNRA refused to acknowledge the 1979 Pet Policy as the logical starting point for NR. In fact, the 1979 Pet Policy was not listed as a document the NR Committee would be able to refer to within the NR process. The GGNRA continued to cling to their view that the 1979 Pet Policy was an illegitimate document which NEVER had the power of law despite the contrary findings of the Court.

NR required consensus among participants. If consensus was not reached for a Section Seven Special Regulation, the GGNRA was allowed to create a Rule arbitrarily, as it did when they

rescinded the 1979 Pet Policy. In fact, even if the NR did reach consensus, the GGNRA maintained that they were still free to ignore the findings of the NR process and subsequently create its own rule.

The GGNRA selected the participating groups and their representatives. Six of the nineteen groups that participated had submitted a petition to the Federal government asking that ALL off-leash recreation in the GGNRA be banned. These same groups had both publicly and privately stated they saw NR as a means to eliminate off-leash recreation from the GGNRA entirely. Despite protests, they remained on the NR Committee.

I was initially slated to participate in NR as a representative for Ocean Beach DOG (OBDOG). When I discovered the flawed manner in which this process was to be conducted, I complained. Instead of resolving my legitimate complaints about the process, the GGNRA/NPS/DOI threw me off the NR Committee. NR predictably came to an end without consensus, and was a colossal waste of taxpayer money to the tune of over five hundred thousand dollars.

Subsequently, the initiation of the DEIS was announced. The explanation for this might be found in a quote from then Western Regional Director (now NPS Director) Jon Jarvis. At the NPS Centennial Initiative Listening Session (Presidio Officer's Club, San Francisco, Calif., March 22, 2007) Director Jarvis said to me and my husband, and I quote, ***"I would rather give up those [the GGNRA] properties than have dogs running loose on them."***

In 2008, the GGNRA supported an attempt by Nancy Pelosi to surreptitiously slip a Park name change (and therefore a change in the governing mandates) from National Recreation Area to National Park through bill H.R. 6305. This action can be construed as an admission that the NPS/GGNRA is aware their actions do not conform to the enabling legislation. Public outcry upon the discovery of this section in HR 6305 forced Nancy Pelosi to withdraw her blatant attempt to circumvent the will of the people and the Federal Court.

Now in 2011, we are presented with this 2400 page DEIS.

Evaluation Of The Actual DEIS

There is no "monitoring of the vital signs" of the GGNRA to support the premise of this DEIS. Further, the failure to complete vital signs monitoring in a competent manner violates Federal law as outlined in the NPS resource "Vital Signs Monitoring". (http://science.nature.nps.gov/im/monitor/LawsPolicy.cfm). A list of laws violated due to the failure to monitor (per this resource) is listed below:

- National Park Service Organic Act
- General Authorities Act of 1970
- Redwood National Park Act
- National Environmental Policy Act of 1969
- Clean Water Act
- Clean Air Act
- Endangered Species Act of 1973
- Environmental Quality Improvement Act of 1970
- Coastal Zone Management Act of 1972
- Marine Protection, Research, and Sanctuaries Act of 1972
- National Parks Omnibus Management Act

The failure to complete competent "vital monitoring" results in the following fatal flaws in this DEIS:

1) The Draft Plan/DEIS assumes but does not provide the required rigorous analysis that resource conditions result solely from dog use of the sites, discounting the contribution from other visitors and recreational users. The Draft Plan/DEIS does not address the contribution of other impactful activities, including special events, to the resource conditions and existing impacts at each of the GGNRA sites.

2) In many places, the Draft Plan/DEIS does not provide any data on actual impacts by dogs in areas being proposed for new dog walking restrictions. The words can, may, and could are everywhere in place of hard facts which would have been in evidence had the required "vital monitoring" been done. In places where data are provided, the Draft Plan/DEIS makes undocumented assumptions that there are unacceptable impacts and that dogs are the culprits.

3) The Draft Plan/DEIS assumes species are present in areas where there is no record of their presence. In other places, there is inconsistent information about the presence of species.

4) Many of the findings in the Draft Plan/DEIS are founded on a reference included in the document as Appendix G, "Law Enforcement Data" (NPS 2008c). This reference document is critically deficient in substantiating statements made in the characterization of existing conditions and in the analysis of the environmental consequences. For example, an entry is as follows: *"observed a black dog chasing a flock of 14 snowy plovers. I observed the dog chasing the birds from the water to the dunes and up and down the beach for several hundred meters north and south. The dog would charge at the birds and the Plovers would fly away from the dog. Each time the Plovers would attempt to land, the dog would charge directly at them and cause them to take flight again. I watched this happen for continually for eight minutes timed by my watch from 1150 to 1158 hours. Then the dog stopped chasing the Plovers and wandered in the hilly dunes to the north for several minutes. The dog then returned to chasing the Snowy Plovers for a few minutes more… After the dog ceased chasing the Plovers, they stopped taking flight and started feeding at the water line."* Clearly, if this dog was chasing plovers, they would not have returned to feeding at the water line after the chase was over. Plovers feed at the high tide line when the water has already retreated. These were sanderlings, birds that appear almost identical to the plover, are plentiful at Ocean Beach (not threatened or endangered) and can be differentiated by different feeding patterns and different resting patterns.

5) The affected environment section mentions California Native Plant Society (CNPS)-listed species as having the potential to occur within the GGNRA but no data are provided as to where/if they are actually present.

6) The Draft Plan/DEIS assumes, but fails to demonstrate, the "cause and effect" relationship that where dogs are present within GGNRA sites, there is a disturbance of natural resources or demonstrate that the disturbance of resources is attributable to dogs (versus other factors).

7) The Soils and Geology section (page 225) includes the following statements: *"Dogs and dog walkers that do not stay on designated trails and venture off trail create social trails that become denuded of vegetation and result in increased soil compaction."* and *"Soil compaction is common along social trails that have been created by – and are heavily used by – bikers, hikers, runners, and dog walkers."* The baseline for comparison throughout the Draft

Plan/DEIS should not be an environment in which it is assumed that there is no impact unless dogs are present, but one in which the impact of dogs is added to the impact of humans. There is little or no objective measurement of trail degradation in this DEIS. Condition-class systems are commonly used in visitor impact monitoring, and trail incision measures assess erosion but we do not see those measurements in this DEIS. Once again, the "vital sign monitoring" is entirely absent in this DEIS.

8) Because the draft EIS does not recognize recreational resources as an environmental resource, the analysis of the environmentally preferable alternative is flawed. Recreation is identified in the GGNRA enabling legislation as one of the four outstanding values to be maintained and protected. In doing so, the enabling legislation recognizes that the achievement of these outstanding values is not mutually exclusive.

9) When new lands become part of GGNRA, the recreational uses existing at the time of acquisition should be allowed to continue unless GGNRA determines, through the public land planning (vital monitoring) and NEPA process that unacceptable impairment would occur.

10) The Draft Plan/DEIS not only fails to disclose and evaluate the impacts of the alternatives on recreational resources in the context of an urban environment, it dismisses the quality of the urban environment entirely on page 22 where it states, ***"the quality of urban areas is not a significant factor in determining a dog management plan."*** As recognized in its enabling legislation, one of the most important aspects of the GGNRA is the sharp contrast between its undeveloped open spaces and the adjacent developed urban environment. The GGNRA's open space and recreational opportunities are intended to provide refuge and relief for nearby urban dwellers. According to NEPA, An EIS is required to analyze the human environment. The federal NEPA rules define the human environment and its scope in an EIS as follows: *"Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment."* When an EIS is prepared and human and natural/physical environmental effects are interrelated, the EIS should discuss all of these effects on the human environment.

The flaws listed above will be highlighted by further analysis of the Western Snowy Plover at Ocean Beach and Crissy Field, the Bank Swallow at Fort Funston, Sweeney Ridge, Mori Point, Muir Beach and review of trails in Marin County.

Alleged Protection For The Western Snowy Plover

This DEIS proposes to further restrict dogs at Ocean Beach and Crissy Field based upon an alleged necessity to protect the Western Snowy Plover. The language of the Endangered Species Act contemplates and supports the position that any loss of these recreational areas for such purpose be balanced by scientific proof that such sacrifice will indeed help save the plover from extinction.

The requisite monitoring of the plover (as dictated by NPS regulations) in the GGNRA has not been completed in a manner that would provide scientific proof of a need for restrictions. In fact, even the GGNRA admitted in 1996 that the scientific evidence showed that restriction of off-leash recreation will NOT increase the number of plovers at Ocean Beach. It is more likely

that the restriction of off-leash recreation in these areas will negatively impact the plover population.

There was a "study" at Ocean Beach in 1996 by Daphne Hatch, GGNRA Wildlife Biologist, which was more of an inventory assessment, and its conclusions are fatally flawed. I will review that "study" in detail here. The next "study" the GGNRA performed with respect to this "threatened" resource at Ocean Beach was in 2006. Hardly an example of vital signs monitoring that meets the standards described in NPS documents. Restrictions were implemented at both Ocean Beach and Crissy Field, based upon this "study" although the "study" was only conducted at Ocean Beach. Further, without mitigation measures implemented over this 10 year time span, and without coordination of intermittent monitoring, it is impossible to draw any conclusions as to the benefit/detriment of restricting or eliminating dogs within these respective ecosystems. The last "study" of the plover in this DEIS was performed in 2008, and is at Crissy Field only. This "study" will be reviewed within this document, but it is again fatally flawed in many respects.

Is The Western Snowy Plover In Danger Of Extinction?

The best scientific data currently available establishes that the Western Snowy Plover is not threatened or endangered (at risk for extinction) at all. Significantly, a study commissioned by the US Fish and Wildlife Service (USFWS) and the US Geological Service (USGS) in June of 2000 noted: ***"Coastal and inland populations of Snowy Plovers in the western United States are currently being managed separately; coastal populations are protected as a Distinct Population Segment under the U.S. Endangered Species Act, while inland populations are not listed. Our study provides no evidence of genetic differentiation between coastal and inland populations."*** (Emphasis added.) These findings demonstrate that the Western Snowy Plover population is far greater than previously believed, and so large as to no longer qualify the Western Snowy Plover as either threatened or endangered.

Why Is The Western Snowy Plover Still Considered Threatened With Extinction?

The latest decision by the USFWS to continue to keep the Western Snowy Plover (WSP) on the Endangered Species List (ESL) is a clear example of the violation of the Endangered Species' Act's requirement that decisions be ***"based upon the best scientific and commercial data available".*** Traditional tenets of science (the scientific method) have been ignored to justify this conclusion.

The scientific method is the process by which scientists, collectively and over time, endeavor to construct an accurate (that is, reliable, consistent and non-arbitrary) representation of the world. In summary, the scientific method attempts to minimize the influence of bias or prejudice in the experimenter when testing a hypothesis or a theory.

The scientific method has four steps

1. Observation and description of a phenomenon or group of phenomena.

Based upon monitoring of the movements of the plovers on the west coast (the WSP) and inland plovers, and the perceived decline of the WSP, the USFWS became concerned as they believed the WSP was a species distinct from the large inland population of plovers, and as such required protection from extinction. The Western Snowy Plover was first listed as a threatened species in 1993. Quoting the USFWS (all of their quotes will be italicized):

"The 1993 listing rule stated that the Pacific Coast WSP is ``genetically isolated'' from the interior breeding populations (58 FR 12864). We based this conclusion on banding and monitoring data, not genetic data. At the time of listing, we assumed the reproductive separation indicated by the banding data, over time, could lead to genetic differentiation. Genetic data for the western snowy plover was not available in 1993."

2. Formulation of a hypothesis to explain the phenomena.

The hypothesis, as stated above, was: **Because there was little or no breeding observed between the WSP and the inland population of plovers, the WSP was genetically different than the large population of plovers living inland, and being in decline, the WSP required protection.**

3. Use of the hypothesis to predict the existence of other phenomena, or to predict quantitatively the results of new observations.

Should genetic testing be performed, the **USFWS expected to see genetic differences between the coastal WSP population and the large inland population, which would confirm the need for protection of the WSP.** The USFWS had no genetic data to confirm their hypothesis. However, apparently the ESA allows the USFWS to move to protect a species first, and investigate to be sure, later. There are timelines specified by law as to how long the USFWS has to test their hypothesis, and it does seem they were abused. In the meantime, measures were taken to protect the WSP, which included most notably for the public, restriction of beach access.

4. Performance of experimental tests of the predictions by several independent experimenters and properly performed experiments.

In fact, a study was done many years later funded and approved by the USFWS and the USGS to test the USFWS hypothesis.

"...a master's thesis (Gorman 2000) that did not find evidence of genetic differentiation between the Pacific Coast WSP and western interior snowy plover populations using mitochondrial DNA (mt DNA)."

The Scientific method concludes: If the experiments bear out the hypothesis it may come to be regarded as a theory or law of nature.... **If the experiments do not bear out the hypothesis, it must be rejected or modified.**

So, now that the USFWS hypothesis had been disproved, and the WSP could not be distinguished genetically from the very large inland plover population did the USFWS move to delist the WSP? NO. In fact, they continued to proceed to implement management policies to protect the WSP, further restricting the public's access to beaches on the Western coast. Several entities (City of Morro Bay and Surf Ocean Beach Commission) who were suffering due to those management policies decided to sue the USFWS to force them to re-evaluate this situation.

The announcement to retain the WSP's listing as a threatened species on April 21, 2006 is the USFWS response to this lawsuit. It appears that **the USFWS, not wishing to delist the plover, refused to reject their hypothesis or modify their hypothesis that the WSP was genetically different**, even though it had been reliably disproved. It is not revealed in the announcement how this came about, but it *appears* that the USFWS authorized another study in an attempt to refute this first study that disproved their hypothesis. USFWS stalled the court proceedings, possibly because they were counting upon the results of this second study using another method of DNA testing to substantiate their original hypothesis that the WSP was genetically different from the large inland population. The second study confirmed the results of the first.

> *"...a more recent study by Funk et al. (2006) includes analysis of microsatellite DNA markers. Funk et al. (2006) found no statistically significant genetic differentiation between Pacific Coast WSP and western interior snowy plover populations using mtDNA and microsatellite DNA markers."*

Did the USFWS at this point acknowledge their hypothesis was incorrect and move to delist the WSP because it is the same creature as the large population of plovers who live inland and whose numbers require no protection from extinction? NO.

Perhaps most telling is the general opinion of Daniel Funk who provided the second DNA study, and whom the USFWS certainly chose to rely upon: "... it is important to use data from a wide range of criteria—interbreeding, nuclear DNA, behavior, morphology, ecology, etc.—not just mtDNA, when delimiting species boundaries."

This is indeed a disturbing concept, because this indicates Mr. Funk and the USFWS are quite comfortable setting public policy that restricts public access to thousands of miles of beach property based upon their personal definition of a species which may ignore verifiable hard DNA data in deference to intangible and/or incomplete data which is subject to bias. **The USFWS chose to rely upon outdated, observational data regarding the lack of interbreeding of the WSP and the larger inland population to conclude that these**

two populations are separate and distinct and that the WSP should therefore, still be protected.

> *"In this finding, we rely primarily on the banding and resighting efforts conducted during the period of 1984 through 1993, as this is the period when banding efforts were underway at several areas on the Pacific coast and in the western interior, and nest monitoring studies and breeding season surveys were underway at many locations when banded birds could be detected. Interior populations have not been banded since 1993 (L. Stenzel, in litt. 2005)."*

Furthermore, the USFWS ignored yet another fundamental of the Scientific Method in the interpretation of this outdated data. The USFWS recruited four heavily biased researchers in favor of protection of the snowy plover to examine the banding data. All four are associated closely with the Audubon Society or Point Reyes Bird Observatory (PRBO). The Audubon Society formally opposed the delisting of the plover and officials at PRBO are in large part responsible for the initial listing of the plover as threatened. Not surprisingly, their conclusions were as follows:

> *"...we conclude that the Pacific Coast WSP is markedly separate from other populations of the subspecies due to behavioral differences and that it, therefore, meets the requirements of our DPS policy for discreteness. Banding studies and resighting efforts demonstrate that during breeding, the Pacific Coast WSP segregates geographically from other members of the subspecies, even those that also winter on the Pacific coast. Although not absolute, this segregation is marked and significant."... This behavioral difference tends to set Pacific Coast WSP individuals apart from the interior birds with which they may mix during the winter."*

The USFWS has chosen to deviate from established scientific method, ignore incontrovertible, tangible, and specific data such as the two DNA studies, and rely instead upon clearly biased assumptions regarding the behavior and breeding of the WSP to justify their decision. The decision requires the USFWS to assume that there is little or no interbreeding between the populations. The decision requires the USFWS to assume that should the coastal plover population be lost, the inland population could not recolonize the coast. Neither of these assumptions has the benefit of reliable, incontrovertible data.

Therefore, since 20% of the plovers have decided they prefer to "hang out" on west coast beaches rather than with the rest of the genetically identical plovers inland, the general public will not be allowed that privilege.

For those unfamilar with the genetic lexicon, consider how it is the Courts and the medical community determine the father of a child when it is in doubt. DNA tests are the standard test utilized, to the exclusion of all others. It would be a gross injustice for the Court to disregard DNA evidence that confirms the child's father is Mr. A, and instead conclude the child's father is Mr. B simply because the child behaved more like Mr. B.

Decisions made based upon intangibles, and without deference to hard, reliable scientific data are subject to abuse of discretion; and are the antithesis of the established "scientific method" which goes to great lengths to minimize the influence of bias or prejudice in the experimenter when testing an hypothesis or a theory. The Endangered Species Act requires decisions to be

based upon science's best evidence, not ideology or politics as it has been in the case of the Western Snowy Plover.

While I and others understand that the GGNRA cannot choose to ignore management of the Western Snowy Plover unless and until the USFWS formally delists the plover, we believe this evidence should temper the decision making when it will result in depriving the public of valuable recreational resources, as expressed in the language of the ESA.

Will Banning Dogs At Ocean Beach Help Protect The Plover From Extinction?

Putting aside the controversy as to whether the Western Snowy Plover is threatened with extinction or not, the United States Fish and Wildlife Service ("USFWS") Draft Recovery Plan for the Western Snowy Plover can answer this question. The Recovery Plan states that the Western Snowy Plover does not nest or breed at the Ocean Beach location. **The Draft Recovery Plan also indicates that despite implementation of best management practices, this location (Ocean Beach) holds NO promise for the plover to nest or breed there in the future. (*Table B-1, p. B-11.*)** Conversations with Gary Page of the Point Reyes Bird Observatory (a central contributor to the USFWS Draft Recovery Plan) reveal that this conclusion was drawn primarily because the level of *human* activity is too high on some California beaches to ever support a breeding population of the plover. This is consistent with the conclusions of a UK study (specifically identified in the new studies section of this comment) which states, "Sites that are highly disturbed are not used by breeding birds, and therefore any increase in disturbance levels on these sites will not alter population size". Thus, the state of the evidence is that the survival/extinction of the Western Snowy Plover population will not be impacted by the management of Ocean Beach.

And in fact, the GGNRA is well aware that the number of plovers on Ocean Beach is not directly related to the number of people or dogs present on the beach. Indeed, the first Hatch Report regarding the WSP and dogs at Ocean Beach concluded: "Factors *other* than number of people or dogs, possibly beach slope and width, appear to exert greater influence over Snowy Plover numbers on Ocean Beach." (*1996 Hatch Report, p. 10, emphasis added.*) Further, Daphne Hatch's 1996 study for the GGNRA documented that since the off-leash policy was officially sanctioned in 1979, there has been an increase of more than 100 percent in the number of snowy plovers frequenting Ocean Beach. Even dog "rush hours" don't seem to faze the plovers—at least, GGNRA observers and analysts couldn't find any negative relationship between the number of dogs on the beach at any given time and the number of plovers on the beach at the same time (pg. 10, 13). Faced with this evidence, **GGNRA officials twice acknowledged, at a December 16, 1996 "informational meeting" for San Francisco beachgoers, that banning off-leash recreation or banning dogs entirely at Ocean Beach would have NO effect on the number of plovers on Ocean Beach.** Despite this finding, the 1996 Hatch report still recommends the restriction of off-leash recreation at Ocean Beach.

The USFWS Declines To List Ocean Beach Or Crissy Field As Critical Habitat For The Western Snowy Plover

As stated before, the fate of the purportedly threatened Western Snowy Plover ("WSP") at Ocean Beach and Crissy Field will have no impact upon the overall survival of the species. Consider that the language of the Endangered Species Act ("ESA") itself states:

> ***"The Secretary (of the Interior) may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying that area as critical habitat, unless he determines, based upon the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in extinction of the species concerned."***

In concurrence, effective October 31, 2005 and again in 2011, the United States Fish and Wildlife Service ("USFWS") excluded all areas in the City and County of San Francisco as critical habitat for the WSP. In the text of the explanation of their decision in 2005, USFWS made the following findings:

> *"Our current designation of critical habitat is different from the 1999 rule in two primary ways. In this designation, we utilized a different methodology for determining essential areas, and we relied upon additional scientific information which was not available in 1999. Thus, this rule, while similar in many respects to that in 1999, is a new designation, and does not designate the same areas."*

With respect to Ocean Beach, the following is stated:

> *"We have decided not to include the suggested additional areas because they do not meet our three criteria from the Methods section: They do not support either sizeable nesting populations or wintering populations, nor do they provide unique habitat or facilitate genetic exchange between otherwise widely separated units. Although we do not consider these areas essential for recovery, we do consider them important, and will continue to review projects in these areas that might affect WSP as required by sections 7 and 10 of the Act."*

Allowing humans and off-leash dogs to enjoy Ocean Beach is not a new project; it is an activity that has persisted on Ocean Beach for well over 50 years. The language of the ESA contemplates and supports the position that any loss of these recreational areas be balanced by *scientific proof* that such sacrifice will indeed help save the WSP from extinction. Clearly, the decision not to include Ocean Beach or Crissy Field as critical habitat demonstrates that such scientific evidence cannot be provided.

Daphne Hatch's 1996 Study Is Fatally Flawed

Because the data do not support a conclusion that restricting off-leash recreation or banning dogs at Ocean Beach will increase the number of plovers, Daphne Hatch chooses to instead to focus on the "disturbance" of the plover at Ocean Beach. **However, no published study of a breeding bird quantifies the population consequences of disturbance. This is despite the fact that disturbance has been implied as a factor causing population decline for a wide range of species (Birdlife International 2000).** Not surprisingly, it is postulated by Ms. Hatch that the energy expended by the plovers to avoid the disturbing dog is detrimental to their overall health and ability to breed, and as expected, no evidence is cited for such a conclusion. It is merely stated in the study, "little research has been conducted on the energetic effects of disturbance and whether individuals can compensate for this lost energy intake and the increased energy expenditure" (p.13). The NPS/GGNRA must consider the fact that the plover is known to annually migrate over 1,000 kilometers. In proportion to their size, this is the equivalent of a 6-foot human running 290 marathons. Does the energy expended when a plover moves 20 or 30 yards to avoid a roaming dog amount to anything significant?

Common sense would indicate that the "disturbance" issue has been substantially overblown, and no scientific study exists to contradict such common sense.

Out of 5,692 dogs observed during the one-and-a-half year study by Ms. Hatch, less than one-third of one-percent chased plovers, and none ever caught or harmed one. An even smaller number "inadvertently" disturbed plovers, causing them to walk, run or sometimes fly out of reach. (*Id., at 11-13.)* See Figure 1 below.

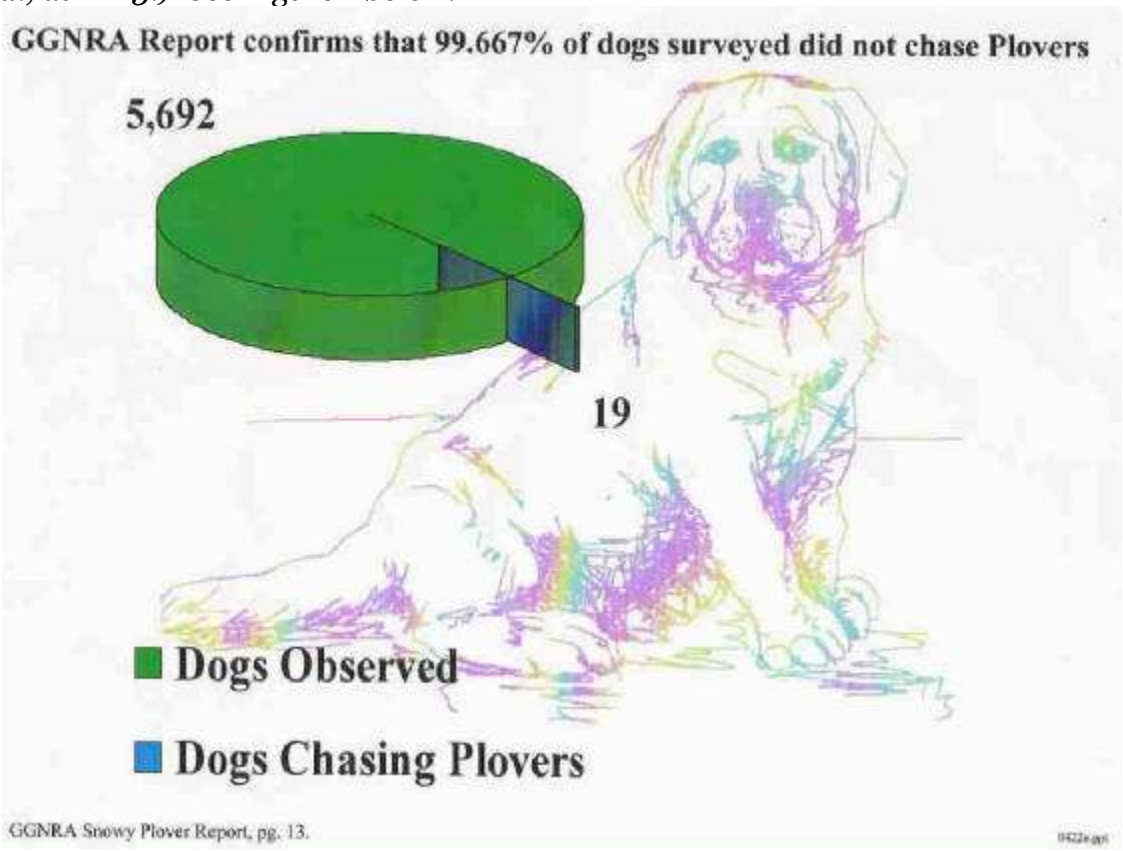


FIGURE 1

On the other hand, Ms. Hatch did not document the more significant matter of the deaths and disturbances of plovers perpetrated by predators such as the gull, raven, and crow. The gull, raven, and crow are documented predators of the plover, while dogs are not. Ravens are black, cousins of the crow, and larger than crows - generally about two feet long. Federal officials, who attribute the soaring numbers of ravens to sharp increases in road-kill and garbage from fast-food restaurants, admit that the population explosion is troubling, given the bird's intelligence.

The Hatch Report is an excellent example as to why scientific studies vary in reliability. Based upon the standards set forth in the scientific community, Ms. Hatch's study qualifies as "junk science", that is, "a publication that has the tone and trappings of science, but is so fundamentally and demonstrably flawed as to lack any serious claim to credibility." Further, this study does not meet the minimum requirements for legitimate "vital monitoring" within the NPS.

The Hatch study is at best an inventory assessment for the Western Snowy plover. When viewed in the context of universally accepted scientific study guidelines, I find there are several reasons for relegating the Hatch Report to "junk science". First, it is merely an observational study. This means its conclusions are not based upon specific, quantifiable measurements, but instead upon observations. Observations alone allow for the participant's natural biases and subjectivity to influence the results. A credible scientific study to determine the success of, for example, a hair growth product, would dictate that the same person would observe the patients at the beginning and end of the treatment to assess the patients' baseline and subsequent hair growth (or lack thereof). This would eliminate the differences inherent in the observations of different people. The evaluator should have no affiliation with any of the manufacturers of the different products tested, and would not know which patient used which product. This is necessary to eliminate an evaluator's desire (even if it is subconscious) to favor a particular product. In contrast, the evaluators in the Hatch study consisted of several different volunteers; accordingly, there was no consistency as to the observations. Some evaluators may have characterized plover movement as a disturbance; others might have believed the plover moved on its own. Moreover, the volunteers were all bird enthusiasts, and the specific focus of their study was humans and dogs**.** As a result, **the very premise of the study would lead the volunteers to subjectively and/or subconsciously expect and desire to document disturbance of the plover by dogs and their owners.**

The effects of other wildlife and other possible interferences with the plover's daily activities were given but brief mention and not factored into the study in any meaningful way. These issues include the following: beach cleaning, off-road vehicles driven at night, activity of specific predators, non-native vegetation, shoreline erosion control projects (bulldozers), the actual width of the beach available to the plover, weather, helicopters, airplanes, bicycles, vehicles used during the day by Park staff, kites, and an oil spill. An evaluator cannot distinguish the reason or reasons why a plover flies away to another spot given the presence of a dog 40 feet away, a raven 50 feet away, and a plane flying overhead. Yet in the Hatch study, it seems clear the dog would be identified as the factor that disturbed the plover. The Hatch study is one that does not compensate for participant bias, and is not able to effectively associate cause and effect because too many variables are unaccounted for. Hence the study is indeed "junk science". Daphne Hatch's conclusions are without merit, and perhaps worse, led to action which may have *harmed* the plover at Ocean Beach.

These facts raise the other problem with the operative hypothesis in a study concluding that off-leash dogs are detrimental to plovers. Because the Hatch study at Ocean Beach ignores gulls, ravens and crows entirely, there is no data to determine whether the presence of dogs protects the plover from birds of prey. The statistics in Daphne Hatch's own study indicate that during the period prior to this study, the number of plovers at Ocean Beach was increasing, even though there was no requirement for dogs to be on-leash. The maximum Snowy Plover counts for the 1979 to 1985 period ranged from 4 to 16, compared to maximum counts (since 1988) of from 38 to 85 birds (*Hatch Report, p. 8*). See Figure 2 below.

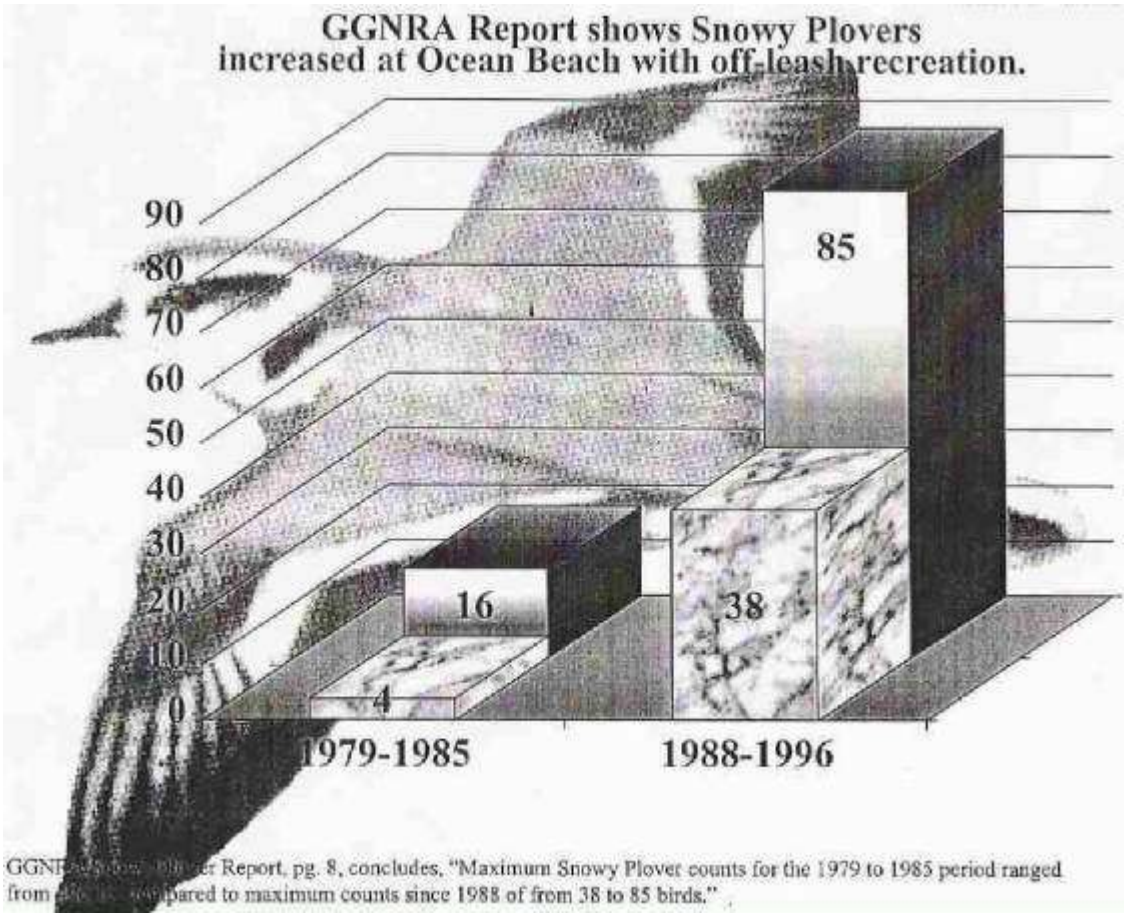


FIGURE 2

We believe that it is mischaracterizing the problem to attribute the "disturbance" of the plover exclusively (or even significantly) to off-leash dogs. The data do not support this conclusion. It follows, therefore, that addressing off-leash dogs *only* will not effectively protect the plover. We maintain, based upon the data, that proper protection of the plover would encompass the effect of humans, predators, and other wildlife as well.

The GGNRA Refuses To Implement Any Other Measures To Protect The Plover

Leashing of dogs (or the banning of dogs) on a 2.2 mile stretch of Ocean Beach is not a rational, measured response to the plover's seasonal presence on approximately 0.4 miles of Ocean Beach, and it does not address the hazards that both humans and predators present.

Peter Baye (U.S. Fish and Wildlife Service Biologist) noted the presence of the Snowy Plover, which roosts, but does not nest, on Ocean Beach, and made recommendations to the GGNRA for its protection. The plovers are present seasonally and relocate from year to year. Mr. Baye recommended: "Exclosures, in concert with educational signage, have been very effective in areas of concentrated usage where beaches are large (e.g. Cape Cod National Seashore). There are no unique impediments inherent at San Francisco's Ocean Beach which would render these

measures infeasible here. They should be implemented at least on an experimental full-scale basis." (*Memo to USFWS, 15 March 1995*). Rather than establishing these flexible, seasonally rotated exclosures to protect plovers against humans, pets, and wild predators, the NPS chose the fixed and narrow measure of (illegally) banishing off-leash recreation, and now has chosen to ban dogs entirely. Mr. Baye's recommendation of a temporary, seasonal fence to be removed when the plovers leave the area and repositioned when they return *could still be* adopted. This solution would allow off-leash dogs on Ocean Beach but keep dogs out of the roosting area. Better yet, Mr. Baye's solution would protect the plovers from the predators, campers, runners, children, kite-flyers, etc., who now invade the roosting area under the GGNRA's current and proposed plan in this DEIS. Mr. Baye's recommendation clearly shows that off-leash recreation on Ocean Beach is compatible with protection of the Snowy Plover. The GGNRA has refused to consider the option of constructing a fence to protect the Ocean Beach plovers.

The GGNRA has made no concerted effort to alleviate the activities that are currently prohibited by law, pose a hazard to the plover, and occur in the vicinity of the plover's roosting. Table A, below, summarizes the current GGNRA record of citations for fireworks, littering, camping, and beach fires on the portion of the beach where the snowy plover may roost. On an average Saturday or Sunday morning in the area the plovers roost you will find (by personal report):

- 5 beach fires (3 unattended)
- 7 campsites (2 had fires)

Extrapolating, if only weekend offenders were cited, there should have been 520 citations/year for fires, and 720 citations/year for camping. The GGNRA's dismal record of enforcement is reflected below in Table A. Moreover, it should be pointed out that litter is generally left at camp sites and the sites of beach fires. This litter attracts ravens and other predators to the area where the plovers are potentially roosting. The number of citations for littering is grossly inadequate. [1]

CITATIONS	2003	2004	2005 (Jan.-Apr.)
Fireworks	17	19	5
Camping	73	104	24
Beach Fires	30	131	18
Littering	12	32	4

Table A. Record of Citations in Plover Area of GGNRA

If the GGNRA is unable to utilize enforcement to protect the plover from the public and their activities, it would make a great deal of sense to provide the exclosures as a refuge for the plover as suggested by Mr. Baye.

[1] In an article published in The San Francisco Examiner; September 26, 2005; by Marisa Lagos; entitled "Residents Irked by Ocean Beach Parties" (please refer to the original online version located at: http://www.sfexaminer.com/articles/2005/09/27/news/20050927_ne01_fires.txt or an online, printable copy located at: http://OceanBeachDOG.home.mindspring.com/GGNRA_Ocean_Beach_NonEnforcement.htm), it is confirmed that the GGNRA's failure to enforce fire and litter policies has led to untold damage in the GGNRA's arbitrarily designated snowy plover habitat at Ocean Beach.

In addition, dead wildlife such as seals, sea lions and birds are not being promptly removed from the beach. The rotting carcasses of these dead creatures are left indefinitely on the beach to attract ravens and other plover predators. Recently, a carcass of a cow washed up on Ocean Beach where it sat for almost a week before officials removed it. The dead body was literally covered with ravens, ripping and eating the dead animal's flesh.

The GGNRA Has No Protocol For The Rescue Of Injured Or Sick Birds Or Mammals In The Park

The response of Federal officials to the oiling of wildlife after the Cosco Busan oil spill was slow and inadequate in the eyes of the citizens who live in the communities affected. However, to those of us who frequently utilize GGNRA properties for recreation, the poor response came as no surprise. Below are my personal notes from my conversation with a GGNRA Wildlife Ecologist regarding my attempted rescue of a bird that morning—sent by email to OBDOG members Thursday September 13, 2007:

Bill Merkle

Dispatch # 415-561-5505

Acknowledges it is unfortunate there are no signs for the public to be advised as to whom to call if a bird, marine mammal or other wildlife is injured or requires assistance.

GGNRA will not necessarily make every attempt to help an injured bird should you bring it to their attention. It will depend upon three factors: 1) type of bird 2) type of injury 3) location of bird

If it is a shorebird (a common bird), they are much less likely to help. He was noncommittal as to what injuries they would address. As to location, if I bring the bird to their personnel, what is that all about? It was explained to me that if the injury occurred in an undeveloped area, then they would be unlikely to rescue the animal or bird. When asked whether Ocean Beach was developed or undeveloped, he said the parking lot would be developed, but the beach would be undeveloped. He went on to explain that in undeveloped (natural) areas, they allow nature to take its course. Disease is a natural process, and predation is a natural process. As for letting nature take its course, what about dogs chasing birds is not natural? I asked how the GGNRA rationalizes that a dog chasing a common shorebird warrants a ticket (we must protect park resources), yet if the same shorebird is brought to them because it is injured, they are satisfied to let it die? I asked then why is it that since they choose (and I believe erroneously) to define dogs as predators of birds, why are they then not considered part of the natural process at the beach and ignored just like every other predator?

He responded that if they received a report that a dog was attacking an injured bird they would most certainly respond. He advised me the GGNRA considers dogs to be an unnatural part of the park as they are associated with human use of the park (which is also by inference an unnatural intrusion into the park areas). Those of us who thought this park was created for our recreational use had better get used to the idea that the Park Service regards us as unwelcome intruders into their "wildlife protection area".

I went on to point out to him that I did not want to hear him defining dogs as predators or complaining about dogs attacking birds as my dog helped me rescue this bird this morning and has done the same numerous other times. My dog has alerted me to hypothermic birds that are still alive, and he won't leave until I pick them up and take them to safety. My dog will chase off ravens that are attacking an injured bird who is unable to effectively defend itself and actively chase those ravens away while I pick

up the injured bird. Earlier this year we rescued a grebe, today it was a common shorebird. I told him I cannot just run by when an injured bird is actively being attacked by ravens and is screaming for help. He didn't have a lot to say in this regard.

The GGNRA claims the purpose of limiting the activities of dogs and their guardians is to "protect the resources" of the park. What resources exactly is the GGNRA protecting? The same resources you are content to let die because you don't care to make the effort to transport injured birds to WildCare in San Rafael? When I asked why they would not transport every injured bird brought to them for care, Mr. Merkle indicated the GGNRA preferred to "manage habitats and work on population levels". I am afraid to contemplate exactly what that means, except that the fallow deer in Marin probably have a pretty good idea. Or perhaps it means they want to work on limiting our human population levels in the Park. Or both.

I am disgusted by the hypocrisy of the GGNRA yet again. Their record of park management policy is abysmal. They neglect to assist injured birds even when they are brought to them, they are slaughtering over a thousand deer in Marin merely because they are non-native.

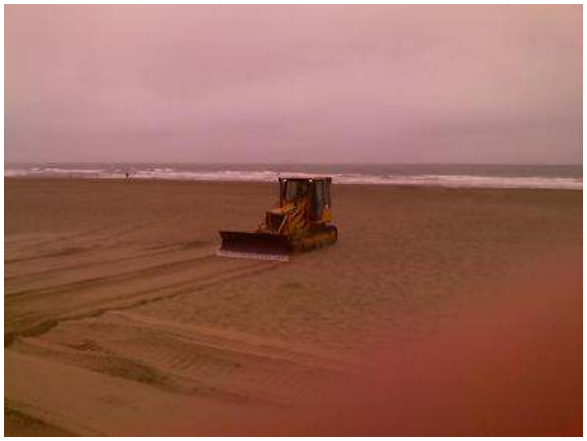
The proposed rule which sacrifices recreational access to protect the plover cannot be justified when GGNRA management has failed to implement the most basic of plans to ensure their well-being.

In this DEIS the GGNRA mentions their concern for wildlife including marine mammals, especially when they beach themselves to rest or when they are injured and on the beach. The GGNRA seems to be able to count the number of reports of beached mammals they receive, however what they fail to mention is that they have no protocol for the visitor to the GGNRA to follow should they come across a marine mammal on the beach. I personally have made numerous requests to GGNRA management for signs to be placed at the beach which would instruct visitors not to approach the beached mammal and where to call to request assistance for the animal. Many visitors to the GGNRA are not local, some have never been to a beach before, and they require instruction so that they can assist the animal effectively. Oddly enough, the GGNRA has managed to post signs up and down the beach to advise us of recreational restrictions regarding fires, camping and the plover, but they cannot post educational signs to benefit marine mammals.

The GGNRA Condones Other Disturbances To The Plover

To further compromise the GGNRA's argument that the restriction of off-leash recreation is necessary to protect the plover, the GGNRA has taken the plover's alleged summer hiatus as an opportunity to begin bulldozing of the "Plover Protection Area". In October of 2005, when United States Fish and Wildlife Service (USFWS) declined to designate Ocean Beach as critical habitat for the plover they stated the following:

> *"Although we do not consider these areas [Ocean Beach and Crissy Field] essential for recovery, we do consider them important, and will continue to review projects in these areas that might affect WSP as required by sections 7and 10 of the Act."* The USFWS is previously on the record as stating, *"Activities that may adversely affect plovers include sand deposition or spreading, beach cleaning, construction of breakwaters and jetties, dune stabilization/restoration using native and nonnative vegetation or fencing, beach leveling and off-road vehicles driven in nesting areas or at night."*



Ocean Beach Plover Protection Area (July 31, 2007)

The picture above was taken during the period when dogs are restricted at Ocean Beach due to the presence of the plover. When OBDOG principals first observed the bulldozers in the Plover Protection Area below, we made a Freedom of Information Act Request of the GGNRA, to determine the purpose of the bulldozing, as well as determine whether USFWS had approved this drastic action. The GGNRA responded to our request, but failed to answer our questions about the bulldozing. We were later advised verbally that there was no correspondence with USFWS to obtain approval for bulldozing, as the plover was not then present. Internal GGNRA records show the GGNRA bargained with USFWS in 1996, sacrificing our off-leash recreational opportunities in order to get USFWS to agree to allow bulldozing in this same area of Ocean Beach. The ESA is very clear that it is not permissible to modify the habitat of an endangered or threatened species when they are not present, but expected to return. One example would be the prohibition of the removal of trees that hold an eagle's nest, even when the eagle is not present or utilizing the nest.

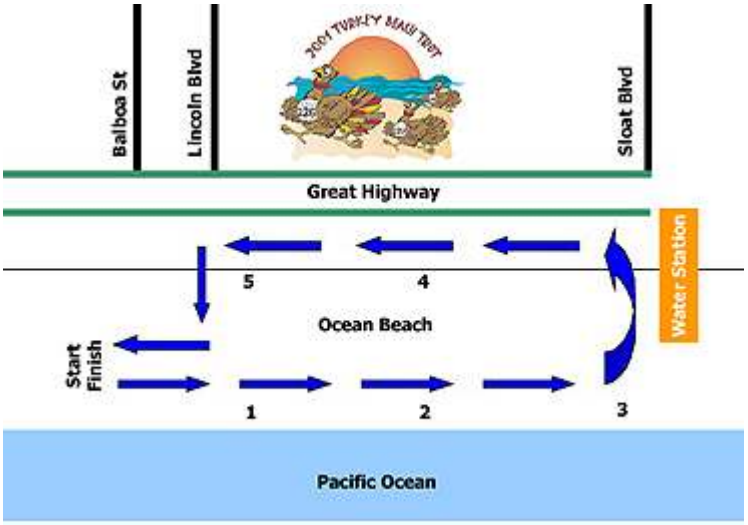
We understand the GGNRA is modifying the beach in this area to minimize the effects of erosion and the drifting of sand on to the Promenade and Great Highway. The GGNRA has refused to acknowledge in any significant fashion that erosion and the progressive collapse of the shoreline limits the areas where the plover can roost and forage, as well as the quality of foodsource for the plover at Ocean Beach. The narrowing beach puts the plover in closer and closer proximity to all users of the beach, thereby increasing the disturbance to the plovers. These conditions will progress despite the GGNRA's move to ban dogs entirely.

We agree the GGNRA needs to deal with erosion at Ocean Beach. However, it seems unlikely that the GGNRA will admit the obvious: the erosion itself and the GGNRA activities designed to deal with erosion adversely affect the plover to a much greater degree than four dogs who allegedly "disturbed" plovers in the last six years. The restriction of off-leash recreation or the banning of dogs entirely to purportedly protect the plover is a complete ruse.

The photos above were taken during the time period when the dogs are restricted because the GGNRA claims the plover is present. We see the condition of the plover habitat after the GGNRA has bulldozed to minimize the effects of drifting sand and erosion. The dunes that remain are there because they do have a little beach grass to help hold them together. The tides have run up and behind the dunes that the GGNRA claims the plover inhabits. Note the excessive debris, the graffiti and the remnants of a Christmas tree in this so-called “habitat”. Considering the plover resides on elevated dunes of dry sand, preferably without vegetation, it is quite apparent as to why Ocean Beach is not suitable plover habitat. It also underscores the absurdity of the claim in this DEIS that dogs digging have some responsibility for the undermining of sand dunes at Ocean Beach.

GGNRA personnel routinely drive off-road vehicles through the plover habitat in order to enforce the leash law at Ocean Beach. Certainly the GGNRA’s “solution” is far more dangerous to the plover than the perceived “problem” (pictures of this activity on file).

In 2006, the Fourth Annual Ocean Beach Turkey Trot was an event sanctioned by the GGNRA (and SFRPD) for 1000 participants. Certainly the GGNRA recognized there would be additional participants who had not officially registered. I and other members of Ocean Beach DOG who witnessed the race estimated 1500 participants. The course for the race was charted directly through the *Snowy Plover Protection Area*. This was also during a time period where the GGNRA declared an "emergency" warranting the restriction of off-leash recreation in this same area in order to minimize "disturbance" to the plover. The GGNRA, by granting permits for the Ocean Beach Turkey Trot, established that their ban of off-leash recreation is arbitrary, capricious and discriminatory-therefore unlawful.



2006 Ocean Beach Turkey Trot Race Course

The 2006 GGNRA Status Report For The Western Snowy Plover Is Fatally Flawed

This is the second report Daphne Hatch (Chief of Natural Resource Management and Science for the Golden Gate National Recreation Area) has produced for the GGNRA to justify the closure of most of Ocean Beach to off-leash recreation due to the transient presence of the Western Snowy Plover (WSP). The first was produced in 1996. The second report, dated November 2, 2006, is the subject of this analysis. Reading Ms. Hatch's report brings to mind an article I recently read from the *Journal of the American Dental Association October 2006 Special Supplement*. The article was entitled, "*Challenges in Interpreting Study Results—The conflict between appearance and reality*". It seems that the GGNRA and Ms. Hatch have endeavored to manipulate the data so as to reach a predetermined outcome. Their conclusions falsely give the reader the appearance that the threat to the WSP from off-leash dogs is great. The reality is there is no credible threat to the WSP from off-leash dogs within the GGNRA.

Bias: The 2006 Hatch report presents itself as an "observational study". Observational studies have the least reliability of any type of scientific study because their results can be distorted by many factors. The first of those factors is bias. Bias generally stated is a "systematic error in the design, conduct, or analysis of a study that results in a mistaken estimate of an exposure's effect on the risk a subject faces". Bias is the basis of our skepticism of research to determine the efficacy of a medication when the research is conducted by a clinician who stands to gain financially if the medication is shown to be effective.

Ms. Hatch clearly has an ideological bias against people and their dogs recreating in any manner at Ocean Beach. She was quoted on September 7, 2005 in the S.F. Chronicle as saying, ***"Ocean Beach without the people is an incredible habitat. But people think of it as a sandbox or their backyard".*** This is an incredible admission from a high ranking GGNRA official considering the enabling legislation of the GGNRA.

Design: Daphne Hatch's bias is apparent in the design of this study. The objective of this study is to prove her assumption that the present management which allows off-leash dog use of Ocean Beach and Crissy Field is inadequate to protect the WSP from harassment/disturbance and other detrimental effects of chasing by dogs. We learn nothing about the relative harassment/disturbance of the plover from any other source in this study. If plovers are harassed/disturbed 50 times in 5.5 hours by ravens, and one time in that same time period by a dog, is the harassment/disturbance by the dog even relevant? A comparative study model would have been more informative with respect to actually determining what management actions, if any, should be taken to protect the plover from harassment/disturbance in general. Frankly, this comparative study should have been undertaken in 1993 when the WSP was first listed as a threatened species, before the decision was made (and later reversed by the Federal Court) to require the leashing of dogs to protect the plover. However, it could have been undertaken at any time. **A comparative study is designed to remove one variable in a situation at a time, and observe the change, if any.** An initial period of observation would document the presence of predators (ravens) and their numbers, as well as the frequency of harassment/disturbance from all sources absent any management action. Next, the predators (ravens) being the most serious source of potential disturbance/harassment are removed as much as possible. Rather than killing all the ravens, the GGNRA could have begun a campaign to reduce and remove litter at the beach as a conservative method to reduce the number of ravens. This would entail aggressive ticketing of those who are observed leaving litter at the beach, and resources would be deployed to clear the beach of litter and dead wildlife daily. No one would be adversely affected, and in fact most beachgoers would welcome a cleaner, safer beach. Indirectly, the lack of litter/foodstuff for the ravens would have been expected to reduce their numbers. After the new management practice has been implemented for a reasonable period of time, a second period of observation is conducted. In this second data collection period, we could assess whether the litter reduction has reduced the number of ravens, and has the reduction in ravens reduced the frequency of harassment/disturbance to the WSP. If the ravens are not reduced, or the frequency of harassment/disturbance is still unacceptable, the next management measure is implemented. Exclosure fencing could have been placed in the areas where the WSP is observed roosting. This would serve to provide some protection for the WSP from the ravens and any other predators, as well as humans and dogs. Education of the public to give the exclosure fencing a wide berth would be appropriate. After a reasonable period of implementation, a third period of observation would be conducted to determine what effect, if any, this latest management method had upon the frequency of harassment/disturbance of the WSP. There also should be the implementation of an aggressive ticketing policy for all dog owners whose dogs were observed chasing plovers at some point within this process. **All of these management measures should have been implemented and assessed for their effectiveness in reducing the frequency of WSP harassment/disturbances before a leash restriction or banning dogs was even considered**. This would have been consistent with the mandate to maintain recreational opportunities in the GGNRA.

Conduct: This study exhibits bias in its conduct as well. Clearly, the participants who performed the surveys either had a pre-existing bias to construe the activity of dogs as harassment, or the training provided by Daphne Hatch and her staff created that bias in the participants. Most likely it is a combination of both, as those individuals who volunteered to do these surveys are identified as Golden Gate Audubon Society members. (We should point out that the Golden Gate Audubon Society is on the record as opposing any off-leash recreation in the GGNRA). Ms. Hatch, in her introduction, spells out the definition of harassment per the Endangered Species Act (ESA). Harassment is "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering". Ms. Hatch seems to use the terms harassment and disturbance interchangeably in this report, so we will generally refer to it as harassment/disturbance. Harassment/disturbances are not well defined in the portion of the study where they are enumerated for Ocean Beach. However, in the Crissy Field portion, there is more description provided for the harassment/disturbances observed. In one case, harassment/disturbance of a plover by a dog was described as "alert posture – stood up and increased vigilance" (in other words, the plover lifted his head up and looked around). Compare this "disturbance" that was classified by a volunteer and the authors of this study as an incident of harassment to the definition of harassment as provided by the ESA. They are clearly inconsistent. In this study, the authors and participants classified activity as harassment/disturbance that does NOT meet the definition of harassment provided by the ESA. **This is a classic example of examiner bias in the conduct of this study.** This is more precisely identified as "misclassification" and serves to invalidate the data collected and conclusions drawn in this study.

Analysis: Analysis of this data is compromised because the data itself is in question. Another factor that makes analysis of this data practically impossible is "confounding" in the design of this study. In this case, "confounding" refers to the fact that this study is not designed to isolate the effect of each component of the beach environment that can affect the plover adversely. For example, an off-leash dog is running at the waterline with its owner and they are some 20 feet from a plover. There is additionally a raven 30 feet and closing from the plover. The plover flushes, and it is recorded as a "disturbance". How is it apparent to the observer whether the dog, the owner or the raven was the source of the disturbance? Practically, it could be any combination of all three. Based upon the premise of this study, it is reasonable to assume the disturbance/harassment would be attributed to the off-leash dog. Is that legitimate? There does not appear to be any attempt made to isolate all other activities within the Park that may adversely affect the plover—they are merely given mention. These would include: Beach patrols in vehicles on the beach, equestrian use of the beach, people walking or jogging, kite flying, littering which attracts predators, the predators (usually ravens) themselves, and removal of kelp or driftwood which are sources of food. No mention is even made of bonfires, camping, litter such as cigarette butts, or the shadows surfboards cast.

Perhaps the most egregious omission in this report is that there is no mention made of beach width. The beach width at Ocean Beach has been decreasing due to erosion. Daphne Hatch's 1996 report concluded on page 10: "Factors other than the number of people or dogs, possibly beach slope and width, appear to exert greater influence over Snowy Plover numbers on Ocean Beach". The GGNRA is quite aware that the number of plovers on Ocean Beach is not directly related to the number of people or dogs present on the beach. However, in this 2006 Daphne Hatch report there is some discussion on page 8 that the plover numbers have leveled off since 2003, and have never matched the level they reached of 85 in 1994. Concurrently, this report discusses repeatedly that since the reinstatement of off-leash recreation, the number of dogs at

Ocean Beach has increased dramatically. The report directly asserts the increase in dogs at Ocean Beach is responsible for a greater number of plover disturbances and it is inferred indirectly responsible for the diminished number of plovers. Had Daphne Hatch been intellectually honest, she might have drawn the following conclusion from this data and a study she cites in this report, "Disturbance to wintering western snowy plovers", by K.D. Lafferty. This Lafferty report states "The distance between human activity and the roost peaked at about 30 meters and relatively few people or dogs beyond this distance disturbed plovers"…presumably because a narrow beach increased the potential overlap between beach users and snowy plovers". Ocean Beach suffers from serious erosion, and hence the beach width has narrowed dramatically, especially during high tides. It could more reasonably be concluded that the narrowed beach width is directly responsible for both the lower plover numbers and the increased frequency of perceived harassment/disturbance of the plover, not the greater number of dogs or their activities on or off of a leash. The narrowed beach width has both eliminated much of the potential habitat for the WSP at Ocean Beach (this is consistent with USFWS critical habitat designation in 2005), and forced all occupants of the beach into closer proximity to the plover, thereby perhaps causing greater harassment/disturbance levels (especially if you construe lifting your head and looking around as a disturbance).

How great are the harassment/disturbance levels really? The way the data is presented in this report is misleading. To put the data in its' simplest form, in 2004 when dogs were required to be on-leash at Ocean Beach, one dog was observed harassing/disturbing a plover in 5.5 hours of observation on weekdays, and one dog was observed harassing/disturbing a plover every 2.5 hours on the weekends. In 2005, when dogs were legally allowed off-leash on Ocean Beach, (and there were many more dogs present) 1 dog harassed/disturbed a plover in 2.4 hours of observation on weekdays, and fewer than 2 dogs harassed/disturbed a plover every hour on weekends. Is this really significant? This report gives us no data regarding the rate of disturbance from any other source, however, the number of ravens far exceeds the number of dogs out at Ocean Beach, and it can easily be postulated the harassment/disturbances due to dogs are dwarfed by the number of harassment/disturbances from the plover's natural predator, the raven.

It is difficult for me to do further analysis of the data, because the GGNRA has illegally withheld the raw data from me. In April of 2006, I requested, by means of a Freedom of Information Act request, all of the data/reports/Environmental Assessments the GGNRA had to substantiate their claim that there were resources in the Park that required protection. The GGNRA responded in writing that such data did not exist. Based upon the representations made in the November 2, 2006 Memorandum from Daphne Hatch and GGNRA Head Ranger Yvette Ruan, the last of the data for this report was collected in February and March of 2006. The data could and legally should have been provided to me in April of 2006. I subsequently appealed this FOIA request to the DOI, and it has not been acted upon despite the fact that the time allowed by law for response has long since expired. The DOI tells me I can sue them for it.

Conclusion: Rational analysis of the situation would suggest that the GGNRA is really not trying to solve a problem. The GGNRA is merely interested in restricting dogs to leashes or banning dogs entirely throughout the GGNRA. Additionally, when taking into account Ms. Hatch's above comments to the S.F. Chronicle in 2005, one must question the future of both humans and dogs in the GGNRA. Taking into account the data regarding the numbers of dogs chasing either shorebirds or plovers in context of the frequency of the behavior over time, it seems ticketing of the miniscule number of offenders would be appropriate rather than

punishing all for the transgressions of a very few. It is a bit like forcing all cyclists in the GGNRA to ride with training wheels because a very few speed through the park.

If GGNRA management complains that they do not have the resources to adequately police Ocean Beach then it provides an appropriate reason to move for reversion of this property. I remind you again of Rolf Diamont's (GGNRA Environmental Coordinator circa 1975) conclusions when the GGNRA had just accepted possession of Ocean Beach from the City of San Francisco—"*Ocean Beach: no rules should be enforced here. Ocean Beach is too large and too accessible to control dogs. It would be a logistical nightmare for the Park Service to try*".

The Hatch report does not meet the criteria for a valid scientific study. It is more appropriately classified as "junk science"— "a publication that has the tone and trappings of science, but is so fundamentally and demonstrably flawed as to lack any serious claim to credibility". **Junk science should never be used as the basis for establishing public policy.**

The GGNRA Ignores Scientific Studies That Do Not Serve Their Purposes

1) Our first example would be a U.C. Berkeley Environmental Sciences study presented by Megan Warren on May 7, 2007 that concludes within the GGNRA that the feeding of the Western Snowy Plover does not appear to be negatively affected by human and pet recreation. This is highly significant. Because the WSP does not breed at Ocean Beach or Crissy Field, its primary essential activity is foraging and feeding. If human and pet recreation does not negatively affect those activities, there is no need to restrict recreation in these areas. The abstract is as follows:

Recreation Disturbance Does Not Change Feeding Behavior of the Western Snowy Plover

Abstract The Western Snowy Plover (*Charadrius alexandrinus nivosus*) is a small shorebird that has many scattered wintering populations along the Pacific Coast of the United States, including several in the Bay Area. This species has been listed as threatened since 1993 under the federal Endangered Species Act of 1973. For this study I measured disturbance rates, types, plover responses and feeding time in three different sites in the San Francisco Bay Area to explore the link between recreation disturbance and feeding behavior. I predicted that as frequency of disturbance increased, the birds would spend less time actively foraging and more time alert. However, data showed no significant relationship between feeding behavior and direct disturbance by human recreators. Instead, I now predict that recreation has a more indirect effect on the western snowy plover feeding behavior. Future research should focus on indirect effects of recreation, such as habitat disturbance and food source quality.

2) Our second example is a study, **"Predicting the population consequences of human disturbance for Ringed Plovers Charadrius hiaticula: a game theory approach"** by Durwyn Liley and William J. Sutherland. This study originates from the School of Biological Sciences, University of East Anglia, Norwich, Norfolk NR4 7TJ, UK. This study clarifies the following three pertinent facts:

- Sites that are highly disturbed are not used by breeding birds, and therefore any increase in disturbance levels on these sites will not alter population size

- **No** published study of a breeding bird quantifies the population consequences of disturbance. This is despite the fact that disturbance has been implied as a factor causing population decline for a wide range of species.
- We think of individuals [birds] as deciding not to breed rather than being prevented from doing so. Such individuals 'queue' for good quality territories rather than adopting a poor quality territory (such as Ocean Beach).

3) The third study originates from the School of Biological Sciences, University of East Anglia, Norwich, Norfolk NR4 7TJ, UK., and was authored by Jennifer A. Gill, published in Ibis (2007) 149(Suppl. 1), 9-14. It is entitled, **"Approaches to measuring the effects of human disturbance on birds".**

This study clarifies a concept that helps to explain the apparent inconsistency of plover behavior at Ocean Beach and Crissy Field. On one hand, Ocean Beach is a highly disturbed, poor quality beach area (in large part due to erosion). Crissy Field is another highly disturbed beach environment at which the plover does NOT feed or breed (per the first study listed here). The GGNRA maintains that the plover is highly susceptible to disturbance by humans and off-leash dogs. This is why the proposed Rule has been promulgated. However, one must ask the question: if the plover is highly disturbed by human and canine off-leash recreation, and the plover does not feed at Crissy Field, why are any plovers there at all? Likewise, although the food source may be a bit better at Ocean Beach, why would the plover choose to roost there and endure the disturbance?

This study opines, "The principal way in which human presence can impact upon wildlife is by altering the ability of animals to exploit important resources. This can operate either through directly restricting access to resources such as food supplies, nesting sites or roosting sites, or by *altering the actual or perceived quality of these sites*. Direct restriction of access to resources can occur through animals avoiding areas where humans are present. **Changes in the quality of sites as a result of human presence could occur, for example, if predators were attracted to areas with humans, *or if the presence of humans reduced the presence of prey species."***

For the plovers observed roosting at Ocean Beach and Crissy Field, humans and off-leash dogs are not restricting their access to resources because the plovers are indeed there. The second alternative is that humans and off-leash dogs are altering the actual or perceived quality of these sites. The most logical conclusion is the presence of humans and their off-leash dogs reduces the presence and/or activity of prey species. This theory has been brought up by others such as the SF SPCA (Objections to the Federal Government's Ban on Off-leash Dogs at Ocean Beach-Jan. 9, 1997, page 4), but was summarily dismissed by the GGNRA wildlife biologists. It is disturbing that the subsequent 2006 Hatch study at Ocean Beach intentionally ignores gulls, ravens and crows entirely, so there is no data available that might confirm the presence of off-leash dogs may protect the plover from birds of prey.

However, the statistics in Daphne Hatch's own 1996 study support this theory. During the period prior to this study, the number of plovers at Ocean Beach was increasing, even though there was no requirement for dogs to be on-leash. The maximum Snowy Plover counts for the 1979 to 1985 period ranged from 4 to 16, compared to maximum counts (since 1988) of from 38 to 85 birds (*Hatch Report, p. 8*).

This UK study also evaluates the methodology of studies like the 2006 Hatch study, which attempt to assess the distribution or behaviour of animals in the presence or absence of disturbance. "A limitation of these types of approaches is that the numbers of animals that would use these sites in the absence of disturbance is generally not known. For example, if the sites with higher levels of disturbance also have lower levels of resource availability (e.g. food or nest-sites) or higher risk of predation, then removing the source of disturbance may have no effect on the numbers of animals in the area."

In actuality, because it is acknowledged by the GGNRA that removal of off-leash dogs or banning will not *increase* the number of plovers at Ocean Beach, the question becomes, will the restriction of dogs *decrease* the number of plovers at Ocean Beach? There is evidence to confirm this is probable, as a similar scenario which involved the Bank Swallow has already occurred in the GGNRA-- in an area directly adjacent to Ocean Beach, i.e., Fort Funston. This will be discussed in a subsequent section devoted to Fort Funston.

4) The fourth study was peer-reviewed and accepted on November 12, 1999, and published in Biological Conservation 97 (2001) 265-268. The authors are Jennifer A. Gill, Ken Norris and William J. Sutherland. The study is **entitled "Why behavioural responses may not reflect the population consequences of human disturbance".**

The authors contend, "The effect of human disturbance on animals is frequently measured in terms of changes in behaviour response to human presence. The magnitude of these changes in behavior is then often used as a measure of the relative susceptibility of species to disturbance; for example, species that show strong avoidance of human presence are often considered to be in greater need of protection from disturbance than those which do not…By contrast, species which do not avoid disturbed areas are often considered as requiring little or no protection from disturbance…From a conservation perspective, human disturbance of wildlife is important only if it affects survival or fecundity and hence causes a population to decline."

What becomes clear after reading this study is that in the GGNRA, Daphne Hatch is defining avoidance behavior and what constitutes a "disturbance" in a very different manner than do other researchers. (This is consistent with my criticism of the 2006 Hatch study). According to this study, avoidance behavior or moving constitutes an activity where the plover actually leaves the site. The 5, 10 or 20 foot flight Daphne Hatch is utilizing as her most severe evidence of disturbance may be relevant in breeding/nesting areas, where movement of that scale can take a plover away from its nest and eggs. In the circumstance where plovers are roosting in an area, this is not classified by other researchers as a "disturbance**". From the perspective of these authors, the plovers roosting at Ocean Beach and Crissy Field require little or no protection from disturbance because they stay at these sites.**

The Latest Study Of The Western Snowy Plover In This DEIS Is Fatally Flawed

This DEIS relies in large part upon a **study by Matthew Zlatunich and Michael Lynes of the Golden Gate Audubon Society**. This new study, like the Warren study, was conducted in cooperation with the GGNRA. As noted previously, this 2011 DEIS again fails to mention a **2007 study by Warren** that found plovers' feeding was not negatively impacted by recreational activities of humans and dogs. This is critically important because the plover does not nest or breed at Ocean Beach or Crissy Field; its' primary activity here is feeding and

foraging for food. Instead of acknowledging the Warren study, the new **Zlatunich-Lynes** study was conducted in 2009/2010 at Crissy Field in San Francisco. This study exhibits many of the scientific shortcomings noted in previous studies:

- This study was merely an observational study
- The observational collection of data was performed by Audubon volunteers who had a bias—the GGAS has publicly advocated the banning of dogs to protect the plover
- This study made no attempt to ascertain comparative effects on the plover. There is no discussion of the disturbance level perpetrated by other sources, even though they tell us that data was collected
- Raw data is not provided to the reader
- The analysis appears to be biased because it is based upon incomplete data. For example, the level of disturbance is not categorized in the analysis even though we are told they were categorized in their collection.
- Assumptions are made in this analysis without supporting explanation. For example, they decided to assign the disturbance to an on-leash dog if he was closer to the plover than his guardian. This ignores the possibility the disturbance was due to the number of bodies—e.g. two people walking would disturb a plover to the same extent as a leashed dog and a person.

To clarify the issue of comparative disturbance, it seems odd that although known predators of the plover are acknowledged to be at Crissy Field, no attempt is made to analyze the disturbance they create for the plover. The Common Raven and American Crow are present, yet ignored in the analysis. Beyond this, the California Gull is noted as being present. This is of interest because a recent study using surveillance cameras at plover nesting sites in San Francisco Bay documented California Gulls as being responsible for 25% of all predation of plover nests. (Robinson-Nilsen, Caitlin1, Jill Bluso Demers1, Cheryl Strong2, and Scott Demers 3; 1 San Francisco Bay Bird Observatory, crobinson@sfbbo.org; 2 U. S. Fish and Wildlife Service, Don Edwards San Francisco Bay National Wildlife Refuge; 3 HT Harvey and Associates DETERMINING THE EFFECTS OF HABITAT ENHANCEMENTS AND PREDATORS FOR WESTERN SNOWY PLOVER). California Gulls are new to some of these areas—could the decline in the number of plovers at Crissy Field be related to an increase in the presence of California Gulls? This study makes no attempt to ascertain if there is any such correlation.

The **Zlatunich-Lynes** study notes the number of plovers has been steadily declining since 2005/2006 records. They choose to rely upon previous conclusions that the greatest disturbance impact to wildlife within the Wildlife Protection Area at Crissy Field is caused by dogs, joggers and walkers. The data from this study showed the number of dogs and humans in the plover area spiked in 2008/2009, and declined dramatically in 2009/2010. The number of plovers continued to decline, despite the reduction in recreational disturbance in 2009/2010. This could lead one to conclude that there is no correlation between the number of dogs and people and the number of plovers present. There is no discussion of this possibility in the data analysis of this study.

The **Zlatunich-Lynes** study is without merit because it deliberately misleads the reader about the GGNRA's legal obligations to protect the plover. Ocean Beach and Crissy Field are not designated as critical habitat by the USFWS. Therefore, the GGNRA is obligated only to prevent the harassment or taking of the plover within its boundaries. Appendix B contains the legal definition of a disturbance which would constitute harassment and be a violation of the law: "If the observer witnesses a blatant violation of the law, such as a dog owner knowingly and without

regard allowing his dog to harass wildlife, the observer shall make note on the comment sheet and shall, upon completion of the survey, file a wildlife harassment report at the park police station…" There is no indication in this study analysis that any observer EVER witnessed this type of harassment of a plover during their observations.

Alternatively, the **Zlatunich-Lynes** study records "disturbances" which they define as minor, moderate and major—none of which rise to the level of the legal and accepted definition of harassment that is utilized by USFWS and other studies. For example, the **Zlatunich-Lynes** study states: "a minor disturbance will cause a resting bird to stand". A clear thinking individual can conclude that a minor "disturbance" as defined by this study is really no disturbance at all. Worse yet, when analyzing the number of "disturbances" observed, there is no acknowledgement as to how many of these "disturbances" are actually minor, moderate or major based upon these authors' criteria. It is entirely possible (and I believe probable) that each of the disturbances recorded and utilized to justify the restriction of recreation were merely minor "disturbances". This would be consistent with the conclusions of other studies including the following which states: "…snowy plovers in other areas have become habituated to relatively constant and non-threatening human trail use." (Trulio, Lynne1 , Caitlin Robinson-Nilsen2, Jana Sokale3 and Kevin Lafferty4 1 San Jose State University; Lynne.Trulio@sjsu.edu ; 2San Francisco Bay Bird Observatory; 3 Sokale Environmental Planning; 4 Western Ecological Research Center, US Geological Survey NESTING SNOWY PLOVER RESPONSE TO NEW TRAIL USE.)

In summary, the **Zlatunich-Lynes** study and its recommendations are flawed, dishonest and biased. The DEIS advocates recreational restrictions based upon this study. Clearly, the failure in this study to find any violation of the law with respect to the protection of the plover, and the omission of studies that contradict the need for recreational restrictions should render this aspect of the DEIS invalid and discredit the conclusion that recreational restrictions must be implemented to protect the plover in the GGNRA.

The Western Snowy Plover At Crissy Field

This DEIS proposes to ban dogs from large areas of Crissy Field to protect the Western Snowy Plover. It is especially disturbing to note the lack of "vital signs monitoring" in this location because there was a full evaluation of the potential environmental impacts of canine recreation when the renovation of Crissy Field was first proposed. This was a perfect opportunity to obtain a baseline monitoring survey and follow through annually to monitor the effects of the originally permitted levels of recreational activity. Instead, you will see that the citizens were advised the recreational interests would be compatible with the renovation just until the renovation was completed. Then off-leash recreation was banned without environmental study. The recent study relied upon within this DEIS has been reviewed in the Ocean Beach section, but it fails entirely to meet standards the NPS sets forth for "vital signs monitoring" .

"The 1988 Crissy Field Site Improvement Assessment evolved from concepts present in the 1980 General Management Plan. The Crissy Field plan recommends native planting, preservation and enhancement of the site's natural qualities, and preservation of views of the bay while recognizing the needs of existing and future visitors." (Final General Management Plan, Amended Environmental Impact Statement, Presidio of San Francisco, July 1994, p. 5.)

Public concern over the impact of the plan on recreation surfaced in 1994. Wind surfers and

dog-walkers were concerned that the new Crissy Field proposals did not address future use of the area for these recreational activities. On November 28, 1994, the Crissy Field project team met with representatives of boardsailors and Rich Avanzino, then President of the SF SPCA, to discuss "the direction [they] were going." (USPROD00684.)

Meanwhile, the GGNPA encountered problems obtaining donations for the project because of these concerns. Toby Rosenblatt was responsible for raising funds on behalf of the GGNPA for the restoration project. He became alarmed in 1994 upon discovering that NPS officials were not honoring the "voice control" 1979 Pet Policy established when the City donated Park lands to the GGNRA. In December 1994, Mr. Rosenblatt wrote a letter to Superintendent O'Neill and Presidio Manager Robert Chandler, protesting reports that Rangers and Park Police were approaching people in the Presidio, Crissy Field, Upper Fort Mason and Ocean Beach "telling them about a leash law and enforcing the law." Mr. Rosenblatt disagreed with the change in enforcement and warned "[i]t will raise a very major reaction, as you know, in the community and will seriously impact relations with lots of people". He also noted that the enforcement was impacting fund raising efforts for Crissy Field: "I know that a change which implements such a law will hurt our fund raising efforts for Crissy and elsewhere - in fact that is beginning to happen already." Copies of the letter were sent to Greg Moore, Executive Director GGNPA, and Amy Meyer of the GGNRA Citizens Advisory Committee. (USPROD00694.)

Nevertheless, the NPS refused to include off-leash recreation in official plans for Crissy Field.

In February 1995, Richard Avanzino met with Superintendent O'Neill, Presidio Manager Chandler and GGNPA Director Moore in order to address concerns "about the continued lack of official acknowledgment and recognition for this vital recreational activity." In a letter summarizing these discussions, Mr. Avanzino noted that the NPS was refusing to provide official recognition because federal regulations require dogs to be leashed**, and many NPS staff and powerful environmental groups who want a wetlands established at Crissy Field are opposed to off-leash dogs. NPS also threatened to retaliate if dogwalkers pushed for official recognition during the planning process: "[I]f we advocate publicly for official recognition and status, our efforts will be frowned on and may well be greeted with retaliatory action."** The SF SPCA responded by demanding official recognition: "We want the National Park Service to officially acknowledge and preserve off-leash dog walking as it exists today at Crissy Field. We want this acknowledgment to be reflected in the legal and other documents pertaining to Crissy Field, as well as in the official design plans for the site." Copies of the letter were sent to Senators Feinstein and Boxer and Representatives Pelosi and Lantos. (USPROD00666-7.)

Public pressure continued to build. On March 28, 1995, a public debate over the issue of a wetlands and its potential impact on off-leash dog-walking was held at the Commonwealth Club. A flyer for the lecture, entitled "Wetlands at Crissy Field - Is this a Good Idea?" identified the speaker as James F. Kirkham, Advisory Partner, Pillsbury Madison & Sutro, Native San Franciscan and Outdoorsman." Summarizing the issue up for debate, the flyer noted: "this habitat could include up to half of the entire acreage of Crissy Field, which could drastically reduce the amount of space left for recreational activities, including off-leash dog exercise." (USPROD00681.) A few days later, on April 1, 1995, a massive Presidio "dog-in" was held to show support for off-leash dog walking at Crissy Field. (USPROD00679-80.)

In April 1995, Mr. Avanzino met with Superintendent O'Neill and Citizens Advisory Commission members Amy Meyer, Jacqueline Young, and Trent Orr to discuss the status of the 1979 Pet

Policy and the issue of inclusion of officially designated off-leash areas in the Crissy Field Plans. A letter memorializing the meeting indicates the following issues were resolved:

1. The "NPS will again honor the Pet Policy";

2. “Legal counsel for the NPS has advised" that the Superintendent has "discretionary authority to reinforce through the Compendium mechanism the principles expressed in the Pet Policy";

3. "This is permitted even though there is some conflict with the Code of Federal Regulations";

4. The NPS agreed to include "site-specific plan that clearly delineates off-leash dog walking areas";

5. The NPS agreed "to public review and participation at the level of the Golden Gate National Recreation Area Advisory Commission of any future changes to the agreed upon off-leash dog walking areas." (Richard Avanzino letter to Brian O'Neill, April 27, 1995.)

To bolster fundraising for wetlands restoration at Crissy Field, the NPS announced (in the San Francisco Chronicle) that it “has no intent to forbid off-leash, even if a large wetlands area is restored along the northern waterfront…all plans either maintain or expand off-leash dog walking. Under **any** future scenario, **more generous areas** of the Presidio’s northern waterfront will be available to dogs.” (Emphasis added.)

On October 2, 1996, the GGNRA issued a “Finding of No Significant Impact” (“FONSI”) for the Crissy Field project. Included in this document were notes about the comments and concerns voiced during the Comment period for the Environmental Assessment (“EA”). The FONSI addressed these concerns as follows: “The Crissy Field Plan…includes ***expanded opportunities*** for off leash dog walking, and the marsh design, as noted in the EA, incorporates features to avoid conflict between other recreational activities, such as off leash dog walking, and wildlife. Section 2.1.2.10 (“Dog Use Areas”) provides: "Dog walking is a popular activity at Crissy Field, and both alternatives provide for the continued enjoyment of that activity. An approximately 70 acre area would be available for dog activities. Walking dogs off leash under voice control would be permitted on the Promenade and beach east of the U.S. Coast Guard station, on the restored airfield, and in the East Beach area." Indeed, the Crissy Field Plan Summary confirmed that the proposed plan includes 70 acres for "off-leash dog walking." (Id., p. 10) With respect to protected species, the issue of vegetation was also addressed in the FONSI as follows: “The decision to avoid the introduction of special status species in the restoration was made recognizing the high level of recreational use at Crissy Field anticipated to continue in the future and the concern expressed by many individuals that special status species could cause a change in management of the site that would restrict recreational uses.” NPS did in fact replant the federally endangered California sea-blite (*Suaeda californica*) that drowned out during the prolonged inlet closures/non-tidal lagoon flooding phases, and some transplants are thriving."

Thereafter, the $35 million in funds were raised, the restoration completed, and subsequently, off-leash recreation was illegally banned at *all* GGNRA properties, and massive ticketing and harassment of dog walkers commenced. This directly violated the following agreements between the GGNRA and San Francisco: *1975 Memorandum of Understanding; 1979 Pet Policy; 1980 General Plan; 1982 GGNRA Natural Resources Plan; 1995 EIR for the Crissy*

Field Plan, and the 1996 Compendium Amendment. The only redress for these actions by the GGNRA was for three citizens to spend ten of thousands of dollars of their own funds to defend themselves in a criminal proceeding challenging the tickets they were illegally issued. The GGNRA was found to have acted illegally when it rescinded the 1979 Pet Policy and began ticketing citizens for engaging in legal activity.

In this DEIS, the presence of these plantings as well as the Western Snowy Plover are utilized to justify the restriction of recreation in the area. The GGNRA has, yet again, violated the mandate under which this Park was created, violated its promises to the City, reneged on the promises made in the FONSI, and made clear that this DEIS had a predetermined outcome to cutback off-leash recreation or ban dogs in areas used for this purpose before the Park ever existed. The failure of this DEIS to present any credible evidence which would support the restriction of recreation due to the presence of the plover has been discussed in detail in the Ocean Beach section of this comment.

The Bank Swallow At Fort Funston

Beginning in 1991, the GGNRA/NPS began destroying the Fort Funston ecosystem with the premise being protection of the California state-threatened Bank Swallow. The GGNRA/NPS maintained that that recreational activity and “exotic” plants were having a profound negative impact on the Bank Swallow. The GGNRA/NPS never conducted an environmental impact analysis or vital monitoring as required by Federal law before beginning this ecological destruction.

For decades, the Bank Swallow population had been thriving at Fort Funston, with their population increasing steadily even as off-leash dog walking was legally permitted and visitor use increased. In 1982, there were 229 burrows, 417 in 1987, and 550 in 1989--providing anecdotal evidence that dogs and Bank Swallows co-exist and thrive.

In October 1991, the GGNRA/NPS closed approximately seven acres at Fort Funston by moving fences designed to protect the Bank Swallow 75 to 100 feet away from the cliffs in order to construct native plant habitats. (Milestone, J. "Just a Swallow Habitat Restoration Project".) By early 1992, almost four acres were converted to coastal dune and chaparral. At that time, NPS staff began chain sawing twenty-four (24) Monterey Cypress trees lining a trail leading to the beach, and volunteers pulled up erosion-preventing ice plant. Bulldozers were used to level hillocks and bury concrete slabs. In the course of only a few months, volunteers replaced ice plant with 5,000 native plants in the four acre area. The entire seven acre project was designed to take five years to complete with only 75% coverage of plants. The goal of the project was to increase "natural" erosion and create "moving sand" ecology. With the closures at Fort Funston, the GGNRA/NPS embarked on a unilateral course that was illegal under its own management policies, the MOU Agreement with the City, and the GGNRA enabling statute.
At Fort Funston, the GGNRA/NPS pursued a strategy of repressing dog-walking each time it expanded its closures. Concomitant with the native plant expansion, Park Rangers began telling dog-walkers, in late 1991 and 1992, to leash their dogs. In May 1992, Mark Scott Hamilton, Chairperson for San Francisco Commission of Animal Control and Welfare, sent a letter to Superintendent O'Neill expressing concern over "NPS Ranger announcements that GGNRA's longstanding ‘voice control’ policy at Fort Funston was to be changed effective May 1.” Mr. Hamilton pointed out that such action would have serious impact on "overall dog-walking

policies within San Francisco's geographic boundaries" and questioned how it could be done without public hearings: "It seems inconsistent with GGNRA's past policies (and perhaps violative of applicable regulatory law) that this change would even be contemplated until after public input hearings."

Public outcry over this action was overwhelming. In response, Western District Director Stanley Albright reassured both U.S. Senator Cranston and Senator Seymour that the GGNRA would continue to abide by the 1979 Pet Policy: "At this time, there is no change in the 1979 Pet Policy which [currently] provides the visitor the privilege of walking one's dog off leash."

Addressing public concern over the closures at a meeting that summer, Head Ranger Jim Milestone, in July 1992, assured citizens that the fences would be in place only one year and the native plants would be compatible with recreational use of the area. (Meeting Minutes of Fort Funston Dog Walkers Association, July 9, 1992.) The next year, GGNRA/NPS expanded the native plant habit an additional three acres beyond the initial seven acre project, again without public review or project approval.

In June 1994, an additional expansion/closure of fifteen acres was proposed without analysis or public hearings. The GGNRA report confirmed that the project was already "expanding into areas beyond our previously agreed to perimeter. Project originally called for removal of all ice plant (a noxious exotic species) from the ten acre Bank Swallow habitat area. This is now complete and new areas outside of Bank Swallow habitat area ***are now within our grasp***." (Project Review Form, Ice Plant Removal, North Tip of Fort Funston, June 1994, emphasis added.) The project goal was to destroy 15 aces of ice plant, using chainsaws to destroy all "exotic" trees and bushes, and using bulldozers where possible. The map attached to this project limited the expansion to the asphalt coastal trail. In fact, this project also was "expanded beyond agreed perimeters" to encompass areas east of the trail, covering the entire Boy Scout Bowl.

In 1995, Rangers began warning dog-walkers at Fort Funston, Crissy Field, and Ocean Beach that they were going to start enforcing the general leash regulation, *36 C.F.R. Section 2.15(a)(2)*. At the same time, GGNRA/NPS announced plans to close ten acres adjacent to Battery Davis under the pretext of erosion control. Ranger Jim Milestone admitted to the public at a meeting in March 1995 protesting the proposed closures that this area was very popular with children for playing Lawrence of Arabia on the steep slope. Dogs loved to chase balls and frisbees at the bottom of slope.

Following these closures, by letter dated March 14, 1995, Superintendent O'Neill promised Richard Avanzino, then-President of the San Francisco SPCA, that the habitat was nearing completion and would not expand south. The GGNRA/NPS also promised that the Battery Davis closure was an approximately 5-year closure during which time it would be revegetated. Signs indicating both areas were closed for native plant revegetation were subsequently placed along the affected areas.

After four years of closures of areas adjacent to the Bank Swallow burrows to off-leash recreation and vegetation revision, in 1995 the number of Bank Swallow burrows plummeted from 924 to 713. A simple review of the scientific literature confirms that Bank Swallows are very tolerant of "human disturbance" at nest sites. Indeed, "many colonies are in human-made sites…such as sand and gravel quarries and road cuts." (Garrison, B., "Bank Swallow," The Birds of North

America, No. 414 (1999), at p. 6.) Mr. Garrison is a California Department of Fish and Game Biologist and an expert on the Bank Swallow. In fact, the only GGNRA/NPS study to evaluate the dramatic drop in numbers of the Bank Swallow concluded that increased predation, *not* recreational activity, was negatively affecting the birds. (Chow, N., "1994-95 Bank Swallow Annual Report", US04906-32.)

In 1996, the GGNRA/NPS failed to document the colony size, and claims to have lost all data for 1997. In 1998, the number of burrows had dropped to 140, and the GGNRA/NPS closed off the entire slope of coastal bluffs below the hang gliders.

In 1998, the Bank Swallow colony fled the "Bank Swallow Protection Area," to the "exotic" ecology and recreational activity along the south cliffs of Fort Funston. As a general rule of survival, birds leave areas where they are under stress. Despite the obvious devastation to the Bank Swallow colony, the GGNRA/NPS failed to analyze the impact of unleashed dogs on controlling predators of the Bank Swallow. (Hatch Report, p. 85, lines 10-16.) NPS Head Ranger J. Milestone indicated the dogs might have protected the Bank Swallows by impacting the weasel population. (US03944.) Additionally, observations indicate that the very habitat the GGNRA/NPS was destroying was the habitat most suitable for the Fort Funston Bank Swallow. Such observations confirm that ice plant rootlets are used by Bank Swallows to construct nests. (US04062-3.)

In January 2001, the NPS closed twelve additional acres to public use and the Bank Swallow colony *again* fled further south away from the new closure.

Because of a total failure to study causal effects of various activities on the Bank Swallow, the GGNRA/NPS has no evidence linking recreational activity with the Bank Swallow decline at Fort Funston. Indeed, the best evidence that recreational activity does not impact the Bank Swallow negatively is the swallows' departure from the fenced off northern cliffs to their present location -- an area of continuous recreational activity. The overwhelming evidence indicates that the GGNRA/NPS native plant projects have negatively impacted the Bank Swallow colony.

In fact, NPS documents confirm that Bank Swallow experts do not agree with the NPS/GGNRA contention that the creation of native plant "flyover" habitat is necessary for the Bank Swallows. Notes of a March 16, 2000 phone conversation with Barry Garrison from the California Fish & Game Department, one of the nation's foremost experts on California Bank Swallows, confirm that he "doesn't feel need flyover" (USPRO01625)....."doesn't necessarily agree that they need a flyover to persist." (USPROD01624). William Shields, Professor of Biology at SUNY, elected fellow of American Ornithologist's Union, leader of SUNY's Conservation Biology concentration (in letter to GGNRA re: closures at Fort Funston, October 2000), reiterates the Bank Swallow's tolerance of human and pet presence and their lack of appreciation for "native plants." *"The poor arguments presented in their (GGNRA) plans make little sense to me. The Bank Swallow like other swallows is quite suited to live with humans and their pets"* and *"... I do not understand or condone what I believe are their misrepresentations about the needs and safety of the Bank Swallows breeding in the cliffs. ... the notion that the swallows would do better by having more species of insects or even more insects on the short flyway between their breeding burrows and their main foraging sites at the nearby lake is a major stretch and smacks of special pleading to me."*

The GGNRA's dune conversion destroyed the Bank Swallow colony nesting site that the birds had used since 1905.

GGNRA/NPS officials have consistently maintained that after some five years, these "habitat" areas would be reopened for public use. Five years have passed for many of these closures, yet to date, no fences have been removed.

This DEIS contains no "monitoring of vital signs" that could possibly justify the actions taken previously or the actions proposed in the Preferred Alternative at Fort Funston to limit recreation of people and their dogs. The science, limited as it is, would indicate the Bank Swallow would benefit from the entirety of Fort Funston again being accessible for off-leash recreation as it was in the 1979 Pet Policy. Instead, this DEIS moves to further restrict recreation of people and dogs to presumably "protect" the Bank Swallow. A legitimate safety mitigation would be planting a bramble-type shrubbery barrier along the cliffs, so as to deter dogs and small children (neither of whom can read warning signage) from the cliff edge and preclude accidental falls off the cliffs for all park users.

This DEIS Promotes The GGNRA Practice Of Perverting The Endangered Species Act To Restrict Recreation

Historically, one avenue for eliminating access to the public-the recovery of endangered and threatened species-has been extensively utilized by GGNRA management. This explains the GGNRA's repeated treatment of any habitat, no matter how deficient, as critical habitat. An example of this would be the "plover protection areas" at Ocean Beach and Crissy Field. This DEIS proposes to ban dogs at these areas which is a management restriction more severe than is often employed in "critical habitat". Although for a time the GGNRA attempted to mislead the public by calling this area "crucial habitat", the fact of the matter is that term that has no legal significance. What is significant is that these areas are NOT critical habitat, therefore management measures are legally limited to preventing "harassment" of the plover at that location. Banning dogs is a restriction that is not commensurate with the observed activities in these areas with respect to the plovers.

Additionally, in this DEIS, the NPS designates areas as "potential habitat". The NPS treats "potential habitat" (build it and they will come) as if it were "critical habitat" and embraces all legal restrictions that would enure from that status. An example of this would be at Mori Point in Pacifica. At Mori Point the GGNRA chose to remove 2/3 of the property from recreational access in order to ***create potential habitat*** for the red-legged frog and San Francisco garter snake. The GGNRA treats this "potential" habitat as if it were "critical" habitat (which it is not) with respect to recreational restrictions.

The GGNRA has also embarked on a mission to create native plant habitats where no habitat previously existed. GGNRA management alleges this is a part of their obligation to "preserve" the park for future enjoyment, however, this is NOT what they are doing. When you read the overview for Fort Funston, it is abundantly clear that they are ***creating*** these native plant habitats, and in doing so they are ***destroying*** parts of the park that existed long before the GGNRA took control. This process is not ***preserving*** anything. Additionally, this is in violation of their authorizing directive, as the establishment of native plant areas requires the exclusion of **humans** from the site, eliminating all recreational activity in the area. Closures at Fort Funston were conducted without a NEPA required environmental impact analysis with regards to recreation or the Bank Swallows, without proper project approval, and without public hearings in violation of NPS regulations, U. S. Department of Interior management policies, and federal law. The GGNRA has implemented similar closures at Baker Beach, Lobos Creek, and in

the Presidio. Concerned citizens were unable to obtain specific vegetative plans for the Presidio. Eventually plans to cut down approximately 4,000 trees in order to plant a native "vinegarweed" came to light and were opposed vigorously.

Lastly, the GGNRA has utilized this DEIS to ambush recreation in areas where the public agreed to "restoration" to enhance the environment for "sensitive" species with the promise that recreation would be able to co-exist with these species when the project was complete. The conclusion in the Environmental Review for the Redwood Creek/Muir Beach "restoration" stated:

> "The preferred alternative will have short-term minor adverse impacts on visitor and resident access to Muir Beach by contributing to traffic congestion. With the implementation of the mitigation measures, the intensity of these adverse effects will be reduced to a minor level. In addition, the overall effect of the project is beneficial and will improve resident/visitor access and recreation opportunities. Implementation of the Preferred Alternative would not impair park visitors or residents."

The project has been completed, and this DEIS now bans dogs from Muir Beach (they were allowed here off-leash before). Residents/visitors do not see the ban as an "improvement of recreation opportunities as previously promised".

GGNRA Usurps Authority Of The State Of California In This DEIS

The GGNRA intends to ban the recreational activities of dogs and their guardians upon the tidelands that are adjacent to GGNRA beaches. These tidelands remain subject to State "public trust" uses and may not have their longstanding recreational usage turned into purely conservation areas without violating State law and the terms of the permit under which the GGNRA manages some of these tidelands. The GGNRA's position that the public trust doctrine goes into "dormancy" while it manages these tidelands is without any legal support. The 1987 permit specifically allows for enforcement of federal regulations on these State-owned tidelands only to the extent they are not inconsistent with State law. The "public trust" doctrine has been significant State law since California's admission into the Union in 1850. The general recreational uses of these tidelands are not subject to federal rulemaking of any type.

Compliance Based Management Strategy

The 2,400 plus page GGRNA Draft Environmental Impact Statement (DEIS) purports to offer its proposed alternative (almost everywhere on leash or no dogs at all) and then several alternatives. However, buried deep within the document is the GGNRA's Compliance-based management Strategy-a **poison pill,** which itself demonstrates that the alternatives are illusory - nothing more than a default to the GGNRA's desired change:

> *"In order to ensure protection of resources from dog walking activities, the dog walking regulations defined in action alternatives B, C, D, and E would be regularly enforced by park law enforcement, and compliance monitored by park staff. A compliance-based management strategy would be implemented to address noncompliance and would apply to all action alternatives. Noncompliance would include dog walking within restricted areas, dog walking*

under voice and sight control in designated on-leash dog walking areas, and dog walking under voice and sight control outside of established ROLAs.

If noncompliance occurs, impacts to resources have the potential to increase and become short-term minor to major adverse. To prevent these impacts from increasing or occurring outside of the designated dog walking areas the NPS would regularly monitor all sites. When noncompliance is observed in an area, park staff would focus on enforcing the regulations, educating dog walkers, and establishing buffer zones, time and use restrictions, and SUP restrictions. If compliance falls below 75 percent (measured as the Executive Summary xiv Golden Gate National Recreation Area percentage of total dogs / dog walkers observed during the previous 12 months not in compliance with the regulations) the area's management would be changed to the next more restrictive level of dog management. In this case, ROLAs would be changed to on-leash dog walking areas and on-leash dog walking areas would be changed to no dog walking areas.

This change would be permanent. Impacts from noncompliance could reach short-term minor to major adverse, but the compliance-based management strategy is designed to return impacts to a level that assumes compliance, as described in the overall impacts analysis, or provide beneficial impacts where dog walking is reduced or eliminated."

The entire concept of "compliance based management strategy" is one that has **never** before been utilized in any other National Park or National Recreation Area by the NPS. The Draft Plan/DEIS states (page 1725) that "the compliance-based management strategy is an important and effective tool to manage uncertainty when proposing new action" and "***has been created***" to assure successful implementation and long-term sustainability. It appears this policy attempts to allow the implementation of future restrictions without public notice and comment. This is unlawful and should never have been included in this DEIS.

It is clear that regardless of whatever alternative is finally selected by the GGNRA, the end game for them is the complete removal of off-leash recreation in the GGNRA as well as the banning of dogs entirely from most, if not all, of the GGNRA. At this point we are once again reminded of the revealing statement made by now NPS Director Jon Jarvis: ***"I would rather give up those [the GGNRA] properties than have dogs running loose on them."***

In summary, in recent interviews GGNRA representatives have stated that they are forced to ban dogs entirely in many of the former GGNRA off-leash areas provided by the 1979 Pet Policy because, *"We do not have the resources to enforce voice control or on-leash compliance..."*. However, it seems to be no problem for them whatsoever to fund staffing resources, expensive surveillance cameras, etc. when it comes to dispensing their "poison pill".

This DEIS (and GGNRA Policy in General) Punishes The Disabled

The disabled are given no special consideration by the GGNRA/NPS. As stated by San Francisco City Attorney Louise Renne (in a letter dated December 19, 2000):

"In addition to receiving numerous complaints regarding the closures at Fort Funston, members of the Board of Supervisors have been contacted by members of the public protesting the

removal of pavement from the Sunset Trail, which was closed in November 1999 and reopened in March, 2000. Organizations such as the Golden Gate Senior Services have complained that a major portion of the trail is no longer paved and is therefore inaccessible to persons with limited mobility. We are writing to request a written response from the GGNRA explaining how this diminution of recreational opportunities is consistent with the GGNRA's responsibilities under the Section 504 of the Rehabilitation Act of 1973 (9 U.S.C. 794). Please include in your response a description of the GGNRA's plan to make its programs accessible to persons with disabilities, including those with mobility impairments".

The Sunset Trail is still closed to the public (including those with disabilities), and the Preferred Alternative would restrict more of the trails the disabled might possibly access at Fort Funston to recreate with their dogs.

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At Sweeney Ridge in Pacifica stands the Portola Monument, considered to be the most historic site in the GGNRA. When the GGNRA took control of this property, it closed the access road off to cars, thereby preventing the disabled or mobility impaired from accessing this site. The hike from the current parking spot is 2.5 miles to the Monument, with an elevation rise of some 1,000 feet. The GGNRA has made no legitimate effort to remedy this situation, despite complaints from the City Council in Pacifica, and groups representing senior citizens. This DEIS further restricts access to this portion of the GGNRA.

Perhaps the best indicator as to how badly the GGNRA treats the disabled in this National Recreation Area is the lawsuit brought by Disability Rights Advocates against the GGNRA several years ago. According to the suit, the federal recreation area is discriminating against people with disabilities by systematically excluding them from such areas as restrooms, visitor centers, historic sites, trails, pathways. One of the plaintiff's attorneys explained that at the Marin Headlands, the visitor center has a ramp, "but to a third-party evaluator, it was so steep as to be inaccessible and dangerous. Alcatraz offers a tram, but it only holds two wheelchairs - they just don't have the capacity. At Muir Woods, one of our plaintiffs has had problems with paved trails. GGNRA hasn't kept the paved trails in a condition that allowed her to use them."

Federal laws since 1973 have obligated Golden Gate National Recreation Area to provide reasonable accommodations for persons with disabilities. Having to hike 2.5 miles to see Portola's Monument may be inconvenient for the average citizen, but it is impossible for an individual with a physical disability. The Sweeney Ridge/Portola Monument situation is a representative example of how when making decisions regarding access the GGNRA always chooses less access. The judge in this litigation sent both parties out to mediation, yet after a time the parties were sent back to the court as there was a complete failure to come to any workable conclusion. Therefore, it cannot be asserted the GGNRA did not recognize the problem—the reality is that the GGNRA has no intention of remedying the problem, unless forced to by the Court. This DEIS is consistent with this pattern of practice.

Environmental Justice

The issue of Environmental Justice, as it is postulated in the DEIS (p.31), is offensive at best. To claim that ethnic minorities are dissuaded from visiting the park because dogs are present is a perversion of the data. None of the 20 or more recommendations in the study about what the GGNRA could do to increase accessibility by minorities includes banning or restricting dogs.

The study was flawed in that it was a small sample of non-randomly selected people who were largely unfamiliar with the GGNRA (only 1/3 had visited at least one GGNRA site in the past year). This creates a situation where you are obtaining opinions about the GGNRA from people who have not experienced the GGNRA to any significant degree. You are likely only measuring their perception of the GGNRA, not what actually occurs there. The responses obtained from this study might be well suited to establishing a public relations campaign for the GGNRA, but not establishing park policy.

The study itself says the goal of the study is to "realize the park goals of understanding how to improve 'connecting people to the parks' and how best to engage under-represented communities in plans and programs"—it was a public relations survey. What the study overlooks is that dog walking connects all different kinds of people to the parks. Had the subjects in this survey been to Fort Funston or Crissy Field recently they would have seen a wide diversity of people -- seniors, kids, disabled people, Asian-Americans, African-Americans, Latinos, Pacific Islanders, all there with dogs. Compare that mix to any other GGNRA park activity (with nowhere near the diversity) and the "we have to restrict dogs to protect ethnic minorities" argument appears misguided and somewhat condescending.

Respondents who did visit the GGNRA express no apparent problem with dogs recreating with people. A quote from p.42 of the SF State study: "I go to the beach... When I look at the ocean I could totally relax and let my imagination run wild. I feel that life in America is truly wonderful when I watch people fishing, jogging, playing and walking their dogs."

An interesting observation: the GGNRA talks about protecting access for ethnic minorities who don't come to the GGNRA, but hypothetically might come to the park if there were changes. Who will protect access for the ethnic minorities who DO come to the park to enjoy off-leash recreation?

Suffice it to say that Environmental Justice would appear to be a specious argument at best for restricting the access of people with their dogs in the GGNRA.

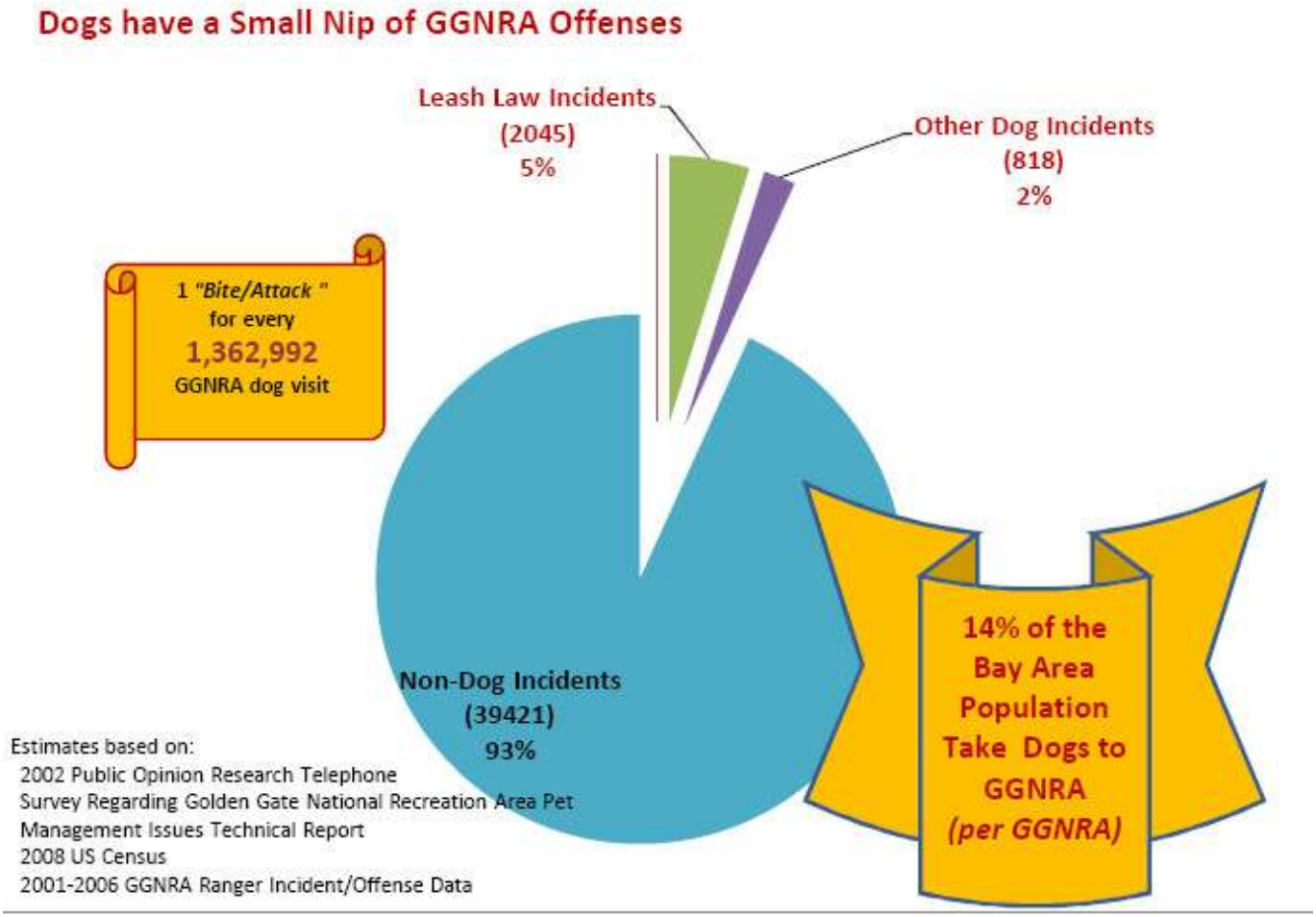
Protection Of The Cultural Resources

The idea that cultural resources such as buried missile silos at Fort Funston require protection from dogs trampling, digging or urinating is far-fetched at best. I would point out that the larger size and weight of humans would be a greater threat to trample notable sites than would dogs. With respect to missile silos at Fort Funston I would not assume all urine deposited would be that of the canine visitors. The GGNRA still has not installed any permanent bathrooms for the many human visitors at Fort Funston. In fact, it seems the GGNRA has little regard for the enjoyment of these resources.

I would also point out the GGNRA has failed miserably in their restoration efforts for facilities such as the Cliff House which are within the Recreation Area's boundaries. The new facility is quite unaesthetic, and popular restaurants within have been altered and have lost their popularity. I have talked to many visitors who are familiar with the previous incarnations of the Cliff House. They always express their disappointment and/or outrage as to its boxy appearance with the service entrants in the most visible area. There used to be a line down the hill for the Sunday brunch at the Cliff House, now it is empty. Our cultural resources are in far greater danger from GGNRA management and their "restoration" plans than they are from dogs.

Safety In The GGNRA

The DEIS states: "Most of the issues related to the health and safety of park visitors are related to their encounters with unruly/aggressive dogs". The actual Law Enforcement citations were obtained and catalogued by interested dog guardians and the chart below is the result of their careful analysis. As you can see, the incidents involving unruly or aggressive dogs comprise only 2 percent of the total incidents Law Enforcement reported in the GGNRA. Remarkably, these bite/attack incidents only occurred once in every 1.36 million park visits. 93 percent of the time, Law Enforcement was dealing with human-specific incidents. Clearly this issue of park safety for visitors and staff being compromised because dogs are present has been entirely overblown to justify the radical recreation restrictions the GGNRA is promoting in this DEIS.



Another safety issue brought up in the DEIS is dog feces. It is disturbing that the GGNRA brings up a multitude of diseases or health risks associated with dog feces, yet provides no statistics about disease contracted by people from dog feces. It is my understanding the data to support this "potential" risk is nonexistent.

A related topic in this DEIS is the extensive maintenance dog areas require. For example, statistics are provided for the high cost of trash removal at Ocean Beach. As a daily visitor to Ocean Beach, I must point out the vast majority of the trash is not dog-related, but people-related. I have not as yet seen groups of dogs huddled around beach fires drinking and eating for hours, or groups of dogs enjoying a beach picnic. It is unfair to allocate excessive maintenance costs for trash removal to dogs. At Fort Funston, the complaint is that they must empty trash more often because it is heavy due to the large volume of dog feces. It seems dogs

and their guardians cannot win in this DEIS. On one hand, they are accused of failing to pick up dog feces, and on the other hand the GGNRA complains the trash receptacles are heavy because of all the dog feces in the trash!

In reality, the safety issue with respect to dogs is a disingenuous argument at best. GGNRA management has sacrificed safety of the public repeatedly when safety comes into conflict with their "restoration" agenda. For example, the GGNRA was happy to spend over a million dollars at Mori Point to construct a bridge so that frogs could migrate from their current habitat on property outside the GGNRA to the "potential habitat" the GGNRA had spent another million dollars to create at Mori Point. Previous to the construction of the bridge, the frogs would have been required to cross the emergency access road for Sharp Park and Mori Point. In building this bridge, the GGNRA destroyed the original access road. Consequently, there is no direct way for emergency vehicles to get out to these popular public properties should there be an emergency.

With respect to management in the GGNRA, their high cost discretionary projects (e.g., the $12 million spent by the GGNRA to create the new Giacomini Wetlands in Marin, the aforementioned bridge to nowhere at Mori Point always take precedence over everything else -- most notably public safety. Budget cuts enforced by the GGNRA in spring 2008 cost nearby Presidio Fire Station No. 2 the use of their ambulance, and could have made the difference between life and death for a woman found hypothermic at Rodeo beach by a maintenance worker.

Water Quality In The GGNRA

It is interesting to review the water quality findings in this DEIS. Although it is asserted dog feces are a significant component in water bacterial contamination, once again the DEIS is short on facts and misleading as well. The DEIS refers to a substudy of the San Francisco Sewage Master Plan which determined that bacterial contamination of waters off Ocean Beach was significant due to dog fecal matter deposited along the shoreline (NPS 1999, 21). The difficulty with this reference is that it cannot be located. It does not exist.

What I find much more relevant is the Annual Report by Heal the Bay. This year's report just came out and Ocean Beach receives an A+ ranking at Balboa Avenue year-round excepting a B ranking during wet weather. At Lincoln Avenue there is an A or A+ ranking year-round excepting a B ranking during wet weather. At Sloat, the ranking is an A or A+ all year-round in wet or dry weather. Clearly dog feces are not creating a problem at Ocean Beach. Further, the 2010 Heal the Bay report acknowledged that in the summer nearly all beaches had a clean bill of health. But in the winter, when heavy rains cause untreated sewage to flow into the bay and ocean, bacteria hit perilous levels in some areas. Deb Self, Director of San Francisco Baykeeper said, "We have a massive, rampant problem with human waste." Among the worst offenders is Baker Beach, where raw sewage leaking from old pipes and overflowing storm drains flows into Lobos Creek and forms a pool at the south end of the beach.

Clearly, most dog guardians are picking up their dogs' feces, and the relatively few instances where people fail to pick up after their dog, while not excused, do not constitute a threat to our water quality.

Effect Upon Surrounding Parks

This DEIS fails to meet NEPA requirements by omitting an analysis of the effects of the proposed change on park properties in the cities and counties where the GGNRA now owns large swaths of recreational resources. However, when reading the DEIS, it seems pretty clear what the effect would be. From the DEIS itself: ***"High numbers of incidents occur because of the large number of people that use the site at one time, and the high number of dogs off leash at the site.."*** Certainly the GGNRA would acknowledge that this is precisely what will happen to parks outside the GGNRA should they close down 90% of the GGNRA's off-leash acreage as the Preferred Alternative would do. This is an unacceptable outcome.

I would also point out that the City and County of San Francisco has an ordinance (San Francisco City and County Health Code; Article I; Section 41.12; Paragraph (c); Subparagraph 5) that, among other things***, requires dog guardians to provide their dogs with adequate exercise to maintain muscle mass and appropriate weight.*** Therefore, the issue of whether or not to exercise dogs when access has become severely restricted is not optional. Dog guardians will be forced to do what they have to in order to comply with San Francisco law.

This Agency Action Will Not Resolve Litigation

In recent history, litigation has been the only recourse the taxpayers have had to combat this abuse of power by the NPS/GGNRA. And, in fact, the NPS/GGNRA was forced to reinstate off-leash recreation in the GGNRA following a Federal Court order in 2005. Should the NPS/GGNRA proceed with any of the alternatives propagated in this DEIS, litigation to have this DEIS declared unlawful; or litigation by San Francisco to take back some of these properties will become a necessity.

Duty To Preserve - This Agency Is Responsible For Resource Degradation

The greatest threat to the long term health of the GGNRA properties is the failure of GGNRA management to implement and use effectively a "Vital Signs Monitoring" program. Ecosystem changes GGNRA management has made until now to "preserve the resources" of the Park would not have been approved had a "Vital Signs Monitoring" program been utilized. The NPS/GGNRA has ***destroyed*** large areas of the Park in an attempt to remake the Park environment in the vision of a nativist ideology. These actions are in direct violation of the enabling legislation for this National Recreation Area. The DEIS' Preferred Alternative proposes additional changes purported to protect wildlife from harassment. The data indicates the unintended consequences of ecological changes GGNRA management has implemented without the benefit of "Vital Signs Monitoring" have proven to be a far greater danger to wildlife than dogs. The scientific data presented in this DEIS does not adequately support the Dog management changes GGNRA management has made subsequent to the 1979 Pet Policy, or the changes they seek to make in any alternative proposed.

Conclusion

The only conclusion one can possibly draw from the evidence produced in this comment is that this DEIS along with its preferred alternatives and the compliance based management strategy are not based upon science or data, but rather the product of a predetermined outcome. I would expect no less from an agency whose top authority, Director Jon Jarvis, is on the record as stating, ***"I would rather give up those [the GGNRA] properties than have dogs running loose on them."***

After consulting with several knowledgeable legal resources, it is my opinion that this DEIS is unlawful, biased and so badly flawed, it must be thrown out. The GGNRA still has the ability to codify the original 1979 Pet Policy as a Section Seven Special Regulation. New lands should maintain the historical use upon inclusion and "vital signs monitoring" should be implemented to determine whether subsequent changes must be made to protect resources. Should the GGNRA fail to heed these recommendations, San Francisco City and County could remedy their issues by formally taking back their affected properties by enforcing their contractual reversionary clause. Unfortunately, this would be of little assistance to Marin and San Mateo counties. Therefore, it would be likely that those counties would pursue Congress to implement a Section Seven Special Regulation to ensure recreational access as was originally intended when this National Recreation Area was created. The third option would be to transfer the GGNRA to another Federal agency such as the Forest Service, where sound principles of land use and planning are a part of their management policy. Should these properties remain under the management of NPS/GGNRA, there must be strict oversight by Congress. Proper safeguards must be put in place to ensure that the sound principles of land use planning and management are adhered to by the GGNRA on a permanent basis.