

May 30, 2017

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Dr. Ray Sauvajot
Associate Director, Natural Resource Stewardship and Science
National Park Service
1849 C Street NW
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Re: Statement re "Review Team for GGNRA NEPA Process" (5/15/17)

Dear Dr. Sauvajot:

We are writing on behalf of our clients, Save Our Recreation, Marin County Dog Owners Group, Coastside Dog Owners Group of San Mateo County, and San Francisco Dog Owners Group, who sued the National Park Service under the Freedom of Information Act for access to documents related to the development of the Golden Gate National Recreation Area Dog Management Plan.

Our clients are extremely concerned about your May 15 statement describing an "independent" review of emails that were uncovered during the FOIA lawsuit. The statement is inaccurate and does not bode well for your stated intention to "restore trust in the process."

Your statement indicates that only one Park Service employee used his private email account to communicate with outside groups that oppose recreational dog walking in the GGNRA. In fact, at least four Park Service officials used their private email accounts in this way: former GGNRA Superintendents Christine Lehnertz and Frank Dean; Howard Levitt, former Director of Communications and Partnerships (and the GGNRA's FOIA Officer); and Shirwin Smith, the former Dog Management Plan point person.

Use of Private Email Accounts

Using their private email, Park Service officials coordinated with outside groups to communicate with elected officials, develop media strategies, and write materials to influence the outcome of the Dog Rule. They colluded with these groups behind the scenes in order to generate letters, public comments, calls, and emails to the National Park Service and elected officials in support of GGNRA's proposed dog-walking restrictions.

Our clients fully expect that any review panel that is commissioned to determine whether these actions violated the National Environmental Policy Act, the Administrative Procedures Act, and any other laws or regulations will look at the private email use of *all* of these Park Service

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officials, *not just one of them* (who happened to retire in October 2016). Additionally, they expect the members of any review panel to study the other email communications and documents uncovered through their FOIA lawsuit. These records reveal the following problems, which we believe demonstrate predetermination, bias, and other bad faith conduct in violation of NEPA and the Administrative Procedures Act.

NPS Administrative Record File Destruction

The National Park Service is legally required to maintain the Administrative Record for the Dog Management Plan, documenting its internal decision-making process and public input. Documents show that Park Service staff intentionally deleted public records and used private email accounts to keep public records from public review and out of what would properly constitute the Administrative Record for any final Dog Rule.

One example of this is GGNRA Director of Communications & Partnerships Howard Levitt's September 2013 email to GGNRA Superintendent Frank Dean and other National Park Service staff entitled "Re comm dog." In that email Levitt directed: "Everyone: Please delete this and the previous message. These conversations are best done by phone." Numerous other emails show other critical staff, including both previous superintendents of the GGNRA, complicit in the use of private email accounts to coordinate with special interest groups that oppose dog walking in the GGNRA.

NPS Bias

Documents show the Park Service's entrenched culture of bias and hostility against those who recreate with their dogs in the GGNRA. They also reveal the Park Service's negative attitude towards groups and elected officials who have spoken out against the GGNRA Dog Management Plan, and towards reporters who have covered the issue.

Park Service staff called supporters of recreational dog walking "rattlesnakes," among other derogatory names, and dismissed journalists critical of their Dog Management Plan as "despicable" and biased.

NPS Omission of Data

While most of the FOIA-produced emails and draft documents pertaining to the Park Service's Dog Management Plan decision-making were significantly redacted, we still found evidence that the agency deliberately omitted scientific data from its Environmental Impact Statement in order to influence public comments. In September 2006, GGNRA Wildlife Ecologist Bill Merkle explained the Park Service's reasoning for leaving sensitive seasonal window data out of the Dog Management Plan's Environmental Impact Statement. He wrote: "We wanted to keep some of the sensitive windows out of the document to avoid having people argue for seasonal use of these habitats or resources outside those seasons."

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NPS Collaboration with External Groups That Supported Their Proposal

Documents reveal that the National Park Service used external groups as surrogates to push the agency's agenda to restrict dog-walking access. GGNRA leaders crafted talking points and developed PR strategies for Golden Gate National Parks Conservancy, National Parks Conservation Association, People for the Parks/Presidio, the San Francisco Chapter of the Sierra Club and other anti-dog groups. Rather than, running an impartial planning process and considering everyone's input, the Park Service worked behind the scenes to advance its agenda via these external groups. Park Service officials also urged groups that oppose dog walking to have their members call and email elected officials.

Finally, our clients are concerned that you did not reveal in your May 15 statement your own involvement in ushering through the GGNRA Dog Management Plan. Is this the type of "transparency" our clients can expect from this process?

Unfortunately, this is not the first time GGNRA's deliberate lack of transparency, exclusion of dog walkers, and bias have corrupted its efforts to restrict dog walking. In 2000, a federal district court blocked GGNRA's efforts to restrict dog walking at Fort Funston, finding that agency records revealed GGNRA's "studied solicitation of one-sided input and its 'discreet' avoidance of the dog walkers." *Ft. Funston Dog Walkers v. Babbitt*, 96 F. Supp. 2d 1021, 1035 (N.D. Cal. 2000). Again in 2005, a federal magistrate judge and district court judge found that GGNRA had improperly shut out the public by failing to provide the public with required notice and an opportunity to comment on GGNRA's efforts to restrict dog walking. *United States v. Barley*, 405 F. Supp. 2d 1121 (N.D. Cal. 2005). NPS's unconstitutional enforcement of dog restrictions also resulted in a high-profile civil rights judgment against the agency. *Hesterberg v. United States*, 71 F. Supp. 3d 1018, 1037 (N.D. Cal. 2014).

Next Steps

Our clients are requesting that you provide the Terms of Reference for the review panel you have commissioned. Our clients are also requesting that you provide the names and agencies of the review panel members, so that we can ensure they receive the full complement of documents that are available (i.e., not already destroyed) on the development of the GGNRA Dog Management Plan.

Additionally, given the extreme distrust the Park Service has created in the San Francisco Bay Area regarding its development of the GGNRA Dog Management Plan, our clients again demand a truly independent investigation of the conduct of Park Service employees by the Department of the Interior's Office of the Inspector General. Moreover, under the Federal Records Act, the destruction and loss of federal records should also be investigated by the National Archivist.

Our clients are discouraged that the Park Service appears to be unwilling to acknowledge the full extent of these problems. Key Park Service officials, collaborating with a handful of special

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interest groups long opposed to dogs in the GGNRA, have corrupted the administrative process for the Dog Management Plan such that it cannot possibly go forward.

Sincerely,



Christopher J. Carr

cc:

House Minority Leader Nancy Pelosi
Congresswoman Jackie Speier
Congressman Jared Huffman
Senator Dianne Feinstein
Senator Kamala Harris
Michael T. Reynolds, Acting Director, National Park Service