

Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area (GGNRA)

Negotiated Rulemaking Committee Protocols

GGNRA is proceeding with formal rulemaking to develop a proposed rule that may alter the application of the existing dog walking regulation, 36 CFR §2.15 (a)(2), at GGNRA through a new special regulation that will govern dog management within its boundaries. As part of rulemaking, and as a reflection of its stated “commitment to include the public meaningfully” in developing a dog management rule, the U.S. Department of Interior has created a Negotiated Rulemaking Advisory Committee (Committee). In a “Dear Participant” letter dated May 10, 2004, GGNRA General Superintendent Brian O’Neill suggested a Committee would “work with GGNRA to investigate a regulation to allow off-leash dog walking in certain areas . . . where resources and visitor safety would not be impacted.”

Creation of a Committee is guided primarily by two federal acts, the Negotiated Rulemaking Act and the Federal Advisory Committee Act. These Acts state the intent for a Committee to work by consensus, and to open discussion with a goal of reaching unanimous agreement, if possible, among all interests represented on the committee to the extent possible. With that goal in mind it is essential that Committee members and alternates commit to a set of working principles and operating protocols. The working principles for a GGNRA Committee are set out below, followed by a set of specific operating protocols.

Working Principles

In pursuing the goal of reaching consensus on a proposed dog management rule for GGNRA the Committee members and alternates commit to work together, adhering to the following principles:

- Use the Committee to build good working relationships among representatives of various interest groups that shall last beyond the life of the Committee
- Be good listeners to the concerns of others, even a lone voice, and work cooperatively to satisfy the concerns of all involved
- Be honest, transparent, and specific about concerns or interests, thereby creating opportunity for joint, interest-based problem solving
- Acknowledge that the process of listening to all voices and working towards consensus is essential for successful, durable and implementable outcomes
- Commit to participate in good faith, and to expend the time necessary to meaningfully participate in and contribute to the process

- Recognize that while people come to the table with different interests, values and perspectives, acceptable outcomes are still possible using objective criteria and analysis
- Be prepared to set aside past differences and adversarial approaches and work constructively with other Committee members
- If not in agreement with a proposed solution, outcome or recommendation, present an alternative that reflects and incorporates, to the extent possible, the various interests that have been expressed.

Operating Protocols for the Committee

1. Membership

- a. Committee Members. Pursuant to FACA, the Secretary of the Interior has appointed Committee members and alternates. Members consist of representatives of various organizations, including environmental groups, off-leash dog proponents, youth and elderly advocates, other park users and other stakeholders. Committee members will be the primary voice for interests they represent in Committee discussions.
- b. Alternates. Alternates will represent Committee members and/or their interests at times when the member is unable to participate in Committee deliberations. Alternates will sit at the table with Committee members during meetings. Members will be the spokesperson for each member-alternate team during Committee discussions, with these exceptions: (1) the member and alternate may switch roles, and (2) the discussion lead for a team may ask that additional perspectives from the team be part of the discussion in order to promote a greater understanding of the issues within the Committee.
- c. The DOI Secretary, in considering appointment decisions for the Committee, used a wide range of advice including:
 - Recommendations from the GGNRA and Regional NPS Office
 - Recommendations from the conveners
 - Self-nominations from those who believe their interest(s) were not adequately represented on the Committee by others

- d. Criteria considered in selecting individuals to be appointed included:
 - Willingness and ability to work with other stakeholders in achieving consensus
 - Contribution to balance among stakeholders and interest groups represented
 - Commitment to participate actively in the process
 - Ability to resolve issues through collaborative deliberations and consensus
 - Willingness to act in good faith consistent with the working principles
- e. Constituents' Interests. Committee members will attempt to represent the interests and concerns of their organizations and related constituents as accurately and thoroughly as possible, and work to ensure that any agreement developed by the Committee is acceptable to their organization.
- f. Dismissal from Committee. While not anticipated, if a Committee member or alternate, or a Subcommittee member, acts in a manner inconsistent with the agreed upon Committee protocols or good faith standards (Appendix 1), GGNRA shall evaluate whether continued participation on the Committee is appropriate and may dismiss that person. If such a situation arises, GGNRA will bring the issue before the Committee for appropriate explanation and discussion prior to any dismissal. The NPS will provide a written explanation to the Committee of the reasons for dismissal of any Committee member or alternative, or Subcommittee member.

2. Meetings

- a. FACA. The Committee is a FACA Committee and as such will follow FACA requirements at all times including, but not limited to, public notice, meeting records, and openness to the public.
- b. Attendance at Meetings. Committee members agree to make a good faith effort to participate in all scheduled meetings or activities. If a member is not able to attend a given meeting, his or her designated alternate shall participate in the member's absence whenever possible. Excessive absence may lead to dismissal from the Committee.
- c. Agendas. Agendas will be developed jointly by the Committee, with a draft distributed to Committee members in advance of each meeting.

- d. Meeting Materials. To the extent possible, all Meeting Materials will be distributed to Committee members and alternates prior to Committee meetings to provide an adequate opportunity to prepare for meetings.
- e. Meeting Summaries. A draft summary of each meeting will be prepared by the facilitation team, and adopted by the Committee at its next meeting. The Draft Meeting Summary will be provided to Committee members and alternates within two weeks after each meeting, or as soon thereafter as possible, to allow adequate time for review. The Committee's approved meeting summaries will be the basis of documentation of the Committee's work, discussions, and recommendations. Once approved by the Committee, meeting summaries will be made available to the public on the National Park Service website.
- f. Caucus. Committee members can call for a "caucus break" at any time to allow for discussions away from the table. The Committee will determine how much time will be allocated for the caucus break.
- g. Meeting Attendees and Comment. Non-member meeting attendees may comment during Committee meetings at times and in a manner designated by the Committee. Written comments may be provided at any time during the negotiated rulemaking process and will be attached to Committee meeting summaries for documentation purposes. A public comment period(s) of up to 20 minutes will also be provided during or after each Committee meeting as determined by the Committee (based on the agenda). Up to two minutes will be allocated to any person wishing to provide public comment at Committee meetings (for each public comment period), depending on available time and the number of people wishing to comment. Time for providing public comment may not be shared or transferred. All comments must be directly related to topics on the meeting agenda.

3. Subcommittees

- a. Establishment. Subcommittees, and their membership, may be established at any time by the Committee to focus on and develop preliminary proposals concerning particular issues or sets of issues. The Committee may provide in its charge to a Subcommittee whatever level of guidance regarding focus and process it deems necessary.
- b. Committee Members. Committee members, or their alternates, should actively participate on Subcommittees to the extent possible.

- c. Subcommittee Participation. Participation in Subcommittees is open to anyone with interest in, and knowledge about, the issues a Subcommittee is considering, with the agreement of the Committee. Subcommittee members must agree to participate in good faith and contribute constructively to the efforts of that Subcommittee, and abide by the same protocols and good faith criteria as the Committee.
- d. Balanced Representation. Committee members agree to make a good faith effort to assure that a balance of interests is represented on each Subcommittee. In particular, efforts will be made to include local government representatives on appropriate Subcommittees.
- e. Process. Subcommittee meetings will be conducted in accordance with any ground rules established by the Committee, consistent with FACA and the Negotiated Rulemaking Act. The Subcommittees will be convened with the assistance of the facilitation team.
- f. Subcommittee Products. Subcommittees are not authorized to make decisions for the Committee; their sole role is to gather information, develop options, make recommendations (if requested) and report back to the Committee.

4. Decision Making

- a. Commitment to Seek Inclusive Solutions. Committee members agree to strive for as broad, inclusive and informed a consensus as possible when making decisions, particularly with respect to final recommendations. Such decisions will be sought through effective meeting facilitation and active, open, constructive participation by Committee members.
- b. Consensus. The Committee shall operate consistent with consensus-seeking principles (rather than voting), as follows:
 - Consensus is both a process and an outcome. Consensus is a flexible concept that must be adapted to each context and desired outcome, and a rigid rule of unanimity for all decisions will not provide this flexibility. The Committee is committed to decision processes that address as many significant interests as possible, regardless of the nature of the decision;
 - The Committee's primary task is to recommend to the GGNRA a proposed rule for dog management. For this decision and other substantive decisions related to developing a proposed rule, consensus shall mean either

support for or acceptance of (meaning agreement not to oppose) a final recommendation to the GGNRA by all Committee members;

- With respect to the Committee's report to the NPS on its deliberations (see "Report of Committee" below), consensus shall mean that all Committee members can support or accept a single version of the report;
- With respect to decision making on matters that relate primarily to Committee operation and administration, including, but not limited to, agendas and schedules, consensus shall mean, at a minimum, broad support for each such interim decision or outcome across the spectrum of interest groups represented on the Committee;
- With respect to adoption of these protocols, consensus shall mean that all Committee members can support or accept the same version of the protocols, even if that version might not be their first choice.

c. Absence of Consensus. In cases where consensus is not achieved despite good faith efforts, the facilitators shall make recommendations to the Committee about: 1) working further to reach consensus through appointed workgroups, or some other designated means; 2) transmitting to GGNRA individual member views or majority/minority views; or 3) tabling the issue, depending on the nature of and context for the decision. With respect to the Committee's primary task, the absence of consensus on any aspect of the proposed rule, or the rule in its entirety, will not constrain GGNRA from proceeding with rulemaking or considering the results of the Committee's work as part of rulemaking.

d. Report of Committee. The Committee shall transmit a report to the National Park Service that reflects the outcome of its deliberations on a proposed rule. If the Committee reaches consensus on a proposed rule, the report will present the proposed rule. If the Committee does not reach consensus on a proposed rule, the report will describe the extent of agreements reached by the Committee, and also points of disagreement and the interests that could not be integrated sufficiently to reach consensus. The Committee may include in a report any other information, recommendations, or materials that the Committee considers appropriate.

5. Safeguards

a. Good Faith. Committee members agree to participate in good faith at all times. Subcommittee participants also are required to participate in good faith. In critiquing an idea or proposal individuals shall make an attempt to provide a constructive

alternative that meets other stakeholders' needs. If that is not possible, then the individual shall attempt to clarify his/her concerns related to that idea or proposal. Attachment 1 defines "Good Faith" in greater detail pertaining to the GGNRA negotiated rulemaking process. These guidelines will be re-visited quarterly.

- b. Right to Withdraw. Committee members may withdraw at any time, for any reason, without prejudice to themselves or the organizations they represent. Committee members agree to provide a written explanation if they withdraw from the process. If a committee member withdraws, their alternate, if available, will replace him or her.
- c. Open Dialogue. Committee members should be able to express themselves without fear of retaliatory action by others. This includes showing respect for the views of others, refraining from personal attacks and clarifying views not fully understood.

6. Communications and Information

- a. Sharing Information. Committee members agree to share all relevant information with other Committee members. This includes assisting the Committee to identify relevant information and making a good faith effort to provide such information in a timely manner.
- b. Outside Activities. Participation on the Committee does not restrict pursuit of other activities related to the intended objectives of the rulemaking. However, it is expected that Committee members will be forthcoming with other Committee members if such activities are undertaken.
- c. Public Record. Information provided to the Committee will become part of the public record. If a Committee member is interested in obtaining information from GGNRA on issues relevant to the negotiated rulemaking process, that request will be brought to GGNRA and the Committee for action before any Freedom of Information Act requests or similar initiatives are taken.

7. Media

- a. Statements to the Media. Committee members and alternates recognize that the content and manner of public statements may affect the ability of the Committee to work together constructively and/or reach consensus. In communications with the media, Committee members and alternates:
 - will speak for themselves and not others unless authorized to do so;

- will not characterize other members' and alternates' viewpoints;
- will not attribute comments or motives to other members or alternates; and
- will not utilize the media as a means of unilaterally influencing Committee deliberations; and
- will not speak on behalf of the Committee unless explicitly authorized by the Committee to do so.

8. Schedule

- a. Scheduling Meetings. Committee and Subcommittee meetings will be scheduled by the Committee and Subcommittees, respectively, with the assistance of the facilitation team.
- b. Duration of the Process. The Negotiated Rulemaking process will operate in concert with the NEPA process necessary to support any GGNRA rulemaking. As these schedules are finalized they will be made available to the Committee. The Charter for the Rulemaking Committee is in place for two years.

Roles and Responsibilities

1. GGNRA: GGNRA is the sponsor of the Negotiated Rulemaking Process and has ultimate responsibility to ensure that the applicable regulations (Negotiated Rulemaking Act, Federal Advisory Committee Act) are appropriately interpreted and applied. At the same time, GGNRA is a member of the Committee and will be treated in a similar fashion as all other Committee members with respect to meeting protocols, input on agendas, etc. GGNRA also appoints a Designated Federal Officer who has oversight of the FACA Committee and responsibilities to ensure the Committee adheres to FACA regulations.
2. Committee Members: Committee members represent a wide range of interests and perspectives concerning dog management in GGNRA and are tasked with working together to find solutions, as possible, which meet the various interests of stakeholders, consistent with applicable National Park Service guidelines and policies. Committee members agree to work together in good faith and abide by these protocols.
3. Committee Alternates: The roles and responsibilities of alternates are similar to those of Committee members, and vary mainly when both are able to attend Committee meetings. *See Section 1.b above.* Alternates also agree to work together in good faith and abide by these protocols.
4. Facilitators: The facilitators are responsible for working with the Committee members and alternates to establish agendas, facilitate Committee meetings (and Subcommittee meetings if Subcommittees are formed), help the Committee identify interests, areas of agreement and areas of disagreement where additional attention is required to resolve outstanding issues, and generally assist the Committee reach its intended objectives of building consensus on dog management solutions in the GGNRA. The facilitators are also responsible for working with the sponsoring agency (GGNRA) to ensure all applicable regulatory guidelines are followed and provide input as requested on how to resolve critical issues facing the Committee.

Attachment 1

GGNRA Dog Management Negotiation Rulemaking

Good Faith Participation Standards: January 2006

(Discussed and revised April 18, 2006)

Note: The purpose of these proposed standards is to establish a clear set of guidelines for evaluating good faith participation consistent with the Negotiated Rulemaking Act. Participation in the Committee is voluntary and denotes an agreement to adhere to the principles. GGNRA expects all Committee members to honor their spirit as well as their wording. These standards will be used as a tool to convene the NR Committee on a forward-looking basis. GGNRA intends to re-visit the standards with Committee members after three months to gather input on their continued value to the NR process.

Negotiated Rulemaking (“NR”) is a consensus-driven alternative to traditional federal agency rulemaking. GGNRA has made the choice to pursue this alternative in order to create an opportunity for key stakeholders to be involved in the process of developing a dog management rule for certain areas of the GGNRA. In particular, NR creates a forum for direct discussion of interests and joint development of potential solutions that is not available in agency rulemaking. GGNRA is committed to NR as long as key conditions for negotiating a proposed rule exist. If not, GGNRA intends to begin pursuing traditional agency rulemaking.

A commitment to good faith participation is central to NR and the goal of seeking consensus among diverse perspectives. The Negotiated Rulemaking Act identifies the willingness to “negotiate in good faith to reach a consensus” as a criterion for Committee membership. Applications for membership on a NR committee require a written commitment to participate in good faith. The Act does not define good faith, however, ultimately leaving that to the convening agency.

All proposed members of the GGNRA Dog Management NR Committee have, in the past, expressed a commitment to participating in good faith. Recent events have raised questions about this commitment in the minds of proposed Committee members and GGNRA staff alike. The following are the standards GGNRA will use to evaluate each Committee member’s commitment to good faith. The criteria will be reviewed by GGNRA three months after convening the first NR session, and input about potential modifications or the continued need for the criteria will be solicited from Committee members. In addition to regular review of the standards at three-month intervals, GGNRA will work with the Committee to address any issues related to the standards that appears to require timely action. These standards are different from the operating protocols to be adopted by the Committee at its first meeting, although some overlap is likely (e.g., approaches to interacting with the media).

These criteria are intended primarily to apply to matters within the scope of the NR, i.e., dog management within GGNRA. While these standards do not apply to other settings in which prospective Committee members might interact (e.g., other rulemaking processes, the San Francisco Dog Advisory Committee), GGNRA believes it is important that

Committee members consider how interactions in those settings affect the likelihood of success of the NR process. Good faith criteria include:

1. A commitment to giving the NR process a reasonable chance to address the longstanding and complex issues involving dog management in the GGNRA . Participants agree that the NR process will serve as the primary vehicle for discussion of matters within the scope of the NR during the period of participation as a Committee member.
2. A commitment to civility in NR proceedings, including the Committee and any Subcommittees that may be created to support the Committee's work. This includes supporting the civil and constructive expression of the diverse values, perspectives, and opinions within the Committee's membership, consistent with the NR goal of building consensus.
3. A commitment to an open and objective process for developing potential solutions. This includes openness to suggested approaches or ideas that do not meet the initial preferences of individuals or organizations participating on the Committee, and the use of objective criteria as the basis for evaluating proposed solutions (to the extent possible). Openness does not imply acceptance of or agreement with the substance of proposed approaches or ideas but denotes a willingness to listen to different approaches.
4. A commitment to refrain from communications or other actions, whether direct or indirect, which could fairly be considered as harassing or attacking another Committee member or their organization/agency.
5. A commitment to supporting the NR process in public communications during the period of participation as a Committee member. This criterion encompasses use of the Internet and World Wide Web, whether direct or indirect, as well as communication with the media. All Committee members are responsible for the content of their respective organizational web pages under this criterion.
6. Committee members, alternates and Subcommittee members commit to ensuring statements made in Committee meetings, Subcommittee meetings, and in public communications outside Committee meetings, regarding all issues relevant to this Negotiated Rulemaking, are accurate.

It is understood that the agreement of each Committee member to these standards shall be consistent with any professional ethical obligations. Proposed or appointed Committee members who cannot commit to or who do not follow these criteria for good faith participation understand that they are subject to removal from the Committee by GGNRA. These standards can be fairly applied only after all prospective Committee members have had a chance to review them and provide a written confirmation of their commitment (no later than January 4, 2006). During this interim period GGNRA expects proposed Committee members to abide by the "spirit" of the proposed standards and will evaluate any issues that arise on a case-by-case basis. The basis for GGNRA actions that result from applying these standards, including removal from the Committee, will be explained to all Committee members by GGNRA.