

SITUATION ASSESSMENT REPORT:

PROPOSED NEGOTIATED
RULEMAKING ON DOG
MANAGEMENT
IN THE
GOLDEN GATE NATIONAL
RECREATION AREA

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INTRODUCTION

Background and Purpose for this Report

National Park Service (NPS) regulations require that all pets, where allowed in national park sites, are crated, caged, or restrained at all times.¹ The regulations apply to the Golden Gate National Recreation Area (GGNRA), which was created in 1972 and presently encompasses approximately 75,500 acres around San Francisco's Bay Area.² A significant portion of GGNRA-managed land includes recreational waterfront in Marin, San Francisco, and San Mateo Counties. In 1979 the GGNRA Citizens Advisory Commission (Commission) adopted a policy that recommended off-leash dog walking and the use of voice control, and this policy generally guided GGNRA's management of dog walking for the next 20 years. In 2001 the Commission acknowledged that its 1979 policy was null and void because it was contrary to NPS regulations.³ Over the past five years NPS staff and park users, including those seeking to walk dogs off leash, have experienced increasing conflict around GGNRA's changed approach to dog management based on enforcement of NPS regulations. This significant change has created both confusion and animosity among those who had used GGNRA areas for off-leash dog walking, in some cases for decades.⁴

GGNRA has decided to address this conflict through rulemaking, with a goal of writing a new regulation covering dog management for this park.⁵ As part of rulemaking, and as a reflection of its stated "commitment to include the public meaningfully" in developing a dog management rule, GGNRA has proposed creating a regulatory negotiation committee that includes members of the public consistent with the Negotiated Rulemaking Act (Rulemaking Act) and Federal Advisory Committee Act (FACA).

In a "Dear Participant" letter dated May 10, 2004, GGNRA General Superintendent Brian O'Neill initiated a process to assess the potential for creating a Negotiated Rulemaking

¹ 36 CFR 2.15(a)(2); *see also* Advanced Notice of Proposed Rulemaking, Pet Management in Golden Gate National Recreation Area, 67 Fed. Reg. 1424 (Jan. 11, 2002) (ANPR).

² GGNRA currently manages 55,827 acres and anticipates additional acreage will be transferred in the near future.

³ This description comes from the ANPR and is consistent with the written report of a panel of senior federal officials convened in 2002 to review GGNRA's off-leash policies and recommend whether to proceed with rulemaking. The Assessment Team acknowledges there are competing views about the effects of the Commission's actions in 2001 and that these views may be at issue in pending litigation. The key point for this assessment report is the change in GGNRA's approach to off-leash dog walking since 2001 and the consequences of that change. The Team also notes that the Commission no longer functions.

⁴ This summary intentionally omits a wealth of detail about the history of the off-leash conflict at GGNRA, including its multiple causes and relationship to dog management in San Francisco, in order to focus attention on options for the future.

⁵ The ANPR contains a detailed perspective on dog management issues in GGNRA. Information on rulemaking and the negotiated rulemaking process can be found on the GGNRA web site at <http://www.nps.gov/goga/pets/regneg/>. Other perspectives can be found on the web pages of different Bay Area organizations, including the San Francisco Dog Owners Group, <http://www.sfdog.org/>, as only one example.

Committee (Committee) and incorporating it into the rulemaking process.⁶ Such 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.” This Situation Assessment Report is intended to assist GGNRA in making its threshold decision about forming a Regulatory Negotiation Committee based on the framework laid out in the Rulemaking Act.⁷

Summary of Assessment Process

The assessment process was conducted jointly by a team of experienced mediators from the Center for Collaborative Policy (CSUS) in Sacramento and CDR Associates in Davis (the “Assessment Team”) under contract to the U.S Institute for Environmental Conflict Resolution (Institute). GGNRA consulted with the Institute on the situation assessment process and the hiring process for the Assessment Team.⁸

The Assessment Team spoke with approximately 45 people in individual and group interviews to gather information for this assessment report during the May-August 2004 time period.⁹ The team began with a list of names developed by GGNRA as a result of its extensive interactions with members of the public, but expanded its list based on advice received during interviews. Most interviews were conducted in person by one or two team members; follow up typically occurred via telephone. The Assessment Team relied on the same agenda as the starting point for all interviews and adjusted its approach for each discussion to focus on priorities and opportunities. This agenda was sent in advance to interview participants whenever possible. Use of a standard agenda allows some generalization about the interviews, although this assessment process does not rely on a statistical approach.¹⁰ The Assessment Team conducted two group interviews with advocates for off-leash dog walking, in addition to individual conversations, and also met as a group with representatives of environmental organizations.

The Assessment Team had multiple goals in conducting its interviews, consistent with the Negotiated Rulemaking Act. The first was to identify the key interests of various individuals and organizations concerned about dog management in the GGNRA who would be significantly affected by a rule and would need to be represented to constitute a balanced committee consistent with the Rulemaking Act. The second was to evaluate the potential for reaching consensus on a recommended rule for GGNRA through a

⁶ A copy of Supt. O’Neill’s letter can be found at Appendix A to this report.

⁷ See the considerations identified in the Rulemaking Act at 5 U.S.C. § 563(a).

⁸ Information about USIECR can be found at www.ecr.gov. USIECR also reviewed and commented on an initial draft of this report, but left final decisions about content and structure to the Assessment Team.

⁹ Appendix B to this report contains the names of people who were interviewed.

¹⁰ GGNRA commissioned two statistical evaluations in connection with the ANPR. The Social Research Laboratory at Northern Arizona University was contracted to analyze public comments submitted in response to the ANPR, and prepared a report entitled “Public Comment Analysis, August 2002.” The same contractor conducted a telephone survey of residents in Marin, San Francisco, Alameda, and San Mateo Counties during May-July 2002. The results of this survey are available in a Technical Report dated December 2002. Both documents are available on the GGNRA web site.

negotiated rulemaking process. The third was to identify prospective candidates who were able and willing to serve on the Committee.

Given the high level of interest in off-leash dog walking issues in the Bay Area there were many more people seeking to participate in the assessment process than there were available hours under the contract. Schedules of potential participants and time constraints also were factors influencing interview decisions. The Assessment Team believes it has achieved its goals: all significant interests have been considered in the assessment process, even though all people with an interest could not participate in this phase.

Structure and Content of this Report

This report is organized as follows: (1) a presentation of the key interests and related considerations disclosed during assessment interviews, consistent with commitments about confidentiality and without attribution; (2) key points of agreement among assessment participants revealed through interviews; (3) key points of disagreement and their potential significance for a decision by GGNRA; and (4) a recommendation about whether to proceed with formation of a committee. There are three Appendices: **A** is Superintendent O’Neill’s letter, **B** identifies participants in the assessment process, and **C** is a general process diagram for a negotiated rulemaking.

The primary purpose for this assessment and report is to assist GGNRA and NPS decision makers in their decision making process about forming a committee. The Assessment Team discussed an initial draft of this report with NPS staff in order to determine whether the draft was likely to meet its intended purpose. The Assessment Team also sought input from the Institute on the same report draft, which was both required under the Assessment Team’s contract with the Institute and useful given the Institute’s unique perspective as a federal dispute resolution organization. The report’s final structure and contents reflect the views and professional judgments of the Assessment Team and are solely attributable to the Assessment Team. The final report is being made available to GGNRA, the Institute, and people who participated in the assessment.

KEY INTERESTS AND CONSIDERATIONS

Overview

One consideration for GGNRA in deciding to create a committee is whether there are a “limited number of identifiable interests that will be significantly affected by the rule.”¹¹ The following list compiled by the Assessment Team from interviews is intended to complement information about interests gained from the ANPR comment process and telephone surveying. The interests are organized into two categories: substantive interests

¹¹ Rulemaking Act § 563(a)(2)

related to off-leash dog walking and procedural interests related to the potential formation and operation of a committee.

It is important to understand a threshold choice facing those participating in the assessment (and others who may participate in a committee). The question of “whether” dogs should be allowed off-leash in GGNRA under any circumstances implicates a number of core values for different groups. For those who believe the answer should be “no,” the decision to participate in a potential discussion of “how” dogs might be allowed off-leash may be difficult and appear inconsistent with other interests.

On the other hand, GGNRA and NPS leadership are committed to addressing this issue, in keeping with legal mandates, due to the unacceptability of the current situation. As such, while not dismissing or overlooking the perspective that opposes any rule allowing off-leash dog walking, the GGNRA is interested in determining through rulemaking whether there are circumstances under which off-leash dog walking could be consistent with its mandates and with significant interests of the public. Their preference is to involve the public in the rulemaking process. All participants in a negotiated rulemaking process must be willing to consider in good faith the potential for designating some areas for off-leash use, even though there is no *a priori* commitment being made to this outcome by GGNRA.

The interests likely to be significantly affected by a rule are presented below without attribution to individuals or groups, consistent with ground rules for the assessment process. Interviews revealed that these interests are, in most cases, not confined to a single individual or group, although there are variations in the way they are framed or their relative importance.

Substantive Interests Related to Off-leash Dog Walking

- Ensure the safety of all GGNRA user groups—including children, frail, elderly, or handicapped individuals—and NPS employees
- Protect GGNRA’s natural resources
- Comply with relevant federal laws including NPS Organic Act, GGNRA authorizing legislation, Endangered Species Act, Marine Mammal Protection Act, and Migratory Bird Act, among others
- Ensure compatibility with other uses
- Improve the status quo [which a number of participants described as “unacceptable”]
- Develop rules that are understandable, enforceable, and have broad buy-in from the public and NPS staff
- Provide opportunities across the GGNRA landscape to the maximum extent possible

- Acknowledge attachments to specific GGNRA locations
- Maintain social relationships related to dog walking in specific locations
- Provide access to beaches and water for off-leash dog walking
- Protect economic interests in commercial dog walking
- Avoid creating a national precedent for benefiting single user groups in parks or off-leash dog walking in other national parks, or creating inconsistencies with the Uniform Code of Regulations [*Note: there are different views about uniformity, consistency, and uniqueness across the National Park System*]
- Develop clear land use criteria for designating all GGNRA uses. Another framing of this interest is: develop principled and objective justifications for resource use decisions by GGNRA
- Create defined off-leash areas with appropriate and effective separation from other uses

Procedural Interests Related to a Potential Negotiated Rulemaking

- Maximize prospects for reaching agreement
- Avoid getting caught up in debates about whether or not dogs create impacts
- Be clear about what is open for discussion and negotiation and what is not
- Ensure a committee is representative of all key perspectives related to potential outcomes
- Coordinate with other federal laws including National Environmental Policy Act (NEPA), the Administrative Procedures Act, and FACA
- Focus on constructive problem solving while establishing clear agreements to avoid advocacy “blitzes” that might undermine the process of building consensus
- Build partnerships that can assist in implementing and enforcing agreements and a regulation
- Identify topics for joint fact-finding efforts intended to build shared confidence in data and information relied on for decision making
- Be sensitive to the demands placed on committee members who have other employment, family, and personal commitments

POINTS OF AGREEMENT AND DISAGREEMENT

One of the potential benefits of a formal assessment process is that it can highlight areas of agreement perhaps not fully perceived by those enmeshed in a conflict. These agreements can include values (about right and wrong, for what is important in a particular situation), interests or needs, and options for meeting interests. The Assessment Team identified a number of apparent points of agreement during the interviews and offers these to assist people in reaching decisions about whether to support or participate in a regulatory negotiation committee. The test for including agreements is “significance,” either because there is broad support (although perhaps not unanimity) or because of the identities of those in apparent agreement.

Interviews also disclosed some clear disagreements which are presented below. For the disagreements, the Team has focused on those likely to affect the ability of a committee to reach consensus on off-leash dog walking.

Agreements on Substantive Off-leash Issues

- There appears to be a broad—not unanimous—expectation that GGNRA ultimately will publish a rule allowing some off-leash dog walking. This prospect engenders a mix of feelings that includes enthusiasm, frustration, and resignation.
- Most people concur with the general proposition that off-leash dog walking causes resource impacts, as do other uses within GGNRA. (There are sharp disagreements, however, about the nature and extent of these impacts, as well as their relative significance. See discussion below of disagreements.)
- The interviews disclosed very little specific opposition to *on-leash* dog walking in most parts of GGNRA. This may be the result of several factors, including the structure of the interview agenda. Nevertheless, the broad lack of attention to this topic is worth noting.
- Dogs and off-leash dog walking play a significant role in the social fabrics of communities where this use traditionally has been allowed.
- Being a proponent of off-leash dog walking and a supporter of protecting natural resources and the environment are not necessarily mutually exclusive.
- This is a highly emotional issue that implicates core values for many people and is often closely linked to personal and group identity.
- There is broad—not unanimous—agreement on the need for balance in GGNRA dog management policy.

Agreements on the Proposal to Conduct a Regulatory Negotiation

- There appears to be broad agreement on the importance of participating in a regulatory negotiation process, particularly if, as the GGNRA has indicated, the alternative is rulemaking by the NPS alone. There is somewhat less agreement on the value of the regulatory negotiation alternative, particularly among those who may feel the existing NPS regulation is sufficient, but the breadth of agreement about participation remains significant.
- There also is broad—not unanimous—agreement that it will not be useful for a committee to argue legal issues related to off-leash dog walking because this will not change minds, will further entrench people in positions, and will detract from constructive dialog and problem solving.
- In discussing impacts of different uses on GGNRA resources it will be important to have credible scientific and technical information. In the absence of such information previous discussions have resulted in deeper disagreements and frustration.
- It is important to base policy decisions on credible information and scientific data where these have a role.

Disagreements and Their Potential Significance

- There is basic disagreement over whether off-leash dog walking is an appropriate use of GGNRA under its various mandates. This basic disagreement has multiple facets. One is a difference in views about the purpose underlying an “urban” national park: to protect what’s left of natural resources and perhaps even restore them, or provide for recreation and other uses in a way that minimizes and mitigates impacts? Another facet is a concern about creating precedents for other national parks, let alone other “urban” parks: some people acknowledge the concern but believe it is possible to distinguish the GGNRA situation, while others resist giving this possibility any weight. It will be important to acknowledge and move beyond these disagreements within a Committee if the goal of examining how dogs might be allowed off-leash is to be explored.
- There is disagreement about whether off-leash dog walking is a shared use (more like bicycling) or is actually an “exclusive” use (like playing loud music) because of inevitable impacts on most other users. This disagreement is likely to appear in a committee’s future discussion of off-leash impacts on GGNRA users. If GGNRA intends to rely on a “shared or exclusive use” criterion as part of rulemaking then stakeholders will have to grapple with nuances and choices.
- As noted above, there have been strong disagreements in the past over the nature and extent of off-leash dog walking impacts on GGNRA resources. Interviews suggest communication has become difficult on this issue and that “denying the obvious” is

widespread. Stakeholders will need to find ways to discuss the issue of impacts constructively, despite their strong differences.

- Most people interviewed offered one or more options for addressing past problems around off-leash dog walking. There are disagreements over the potential utility of specific management options at different locations. For example, some believe that time-of-day restrictions can work, while others only see problems. Physical barriers are another example: some see fencing or other physical barriers as acceptable, while others offer strong objections depending on specifics and locations. While some level of disagreement is to be expected, stakeholders will need to bring flexibility to discussions about specific options if a consensus is to be achieved.
- The interviews suggest there will be disagreements about beach access at specific locations, as off-leash advocates insist on the importance of beach access around GGNRA and others suggest restrictions on such access are necessary, depending on the location. Again, flexibility will be needed to achieve consensus.
- There are important disagreements about the ability of GGNRA to match enforcement resources to a realistic management program that would allow off-leash dog walking given projected budget constraints. Stakeholders will have to grapple with practicability, and it will be important for GGNRA to provide reliable information on this issue.
- There is potential disagreement about the role of scientific data and other technical information in GGNRA's decision making about use of park resources. It will be important for GGNRA to be prepared to address this issue in a committee process.

KEY VARIABLES AND UNKNOWNNS

The Assessment Team's interviews highlighted a number of variables and unknown factors that will influence the potential for reaching consensus on a proposed regulation. The Team discussed these variables openly during interviews, and in some cases scheduled follow up discussions, in order to understand how they might affect the potential success of a committee. The variables in the GGNRA context create a band of uncertainty that is reflected in the Assessment Team's recommendations, set out below. These variables are:

- *The commitment and ability of stakeholders to move beyond their well known differences on the "whether" issue to focus on "how" off-leash dog walking might be allowed.* The significance of this issue, and the difficult choices facing those opposed to off-leash dog walking, are described above in the "Key Interests" section of the report.
- *The commitment of advocacy group representatives to focus on constructive problem solving and demonstrate flexibility around objectives.* The intensity of feeling over the off-leash issue has been expressed through a range of strategies and tactics in other Bay Area forums, including public demonstrations and media-oriented actions. GGNRA

also has experienced at least one significant public demonstration. A Committee seeking consensus will not thrive if stakeholder groups pursue their goals using similar approaches. Stakeholders must be willing to do their work within a Committee, including the potentially difficult process of making tradeoffs. The Assessment Team views the “commitment to reaching consensus” as the single most important unknown based on its interviews.

- *The lingering consequences of past conflicts over this issue in San Francisco and the Bay Area.* Activists will bring their experiences, perceptions, judgments and assumptions about other people and organizations to a regulatory negotiation committee. This history can be an asset: people understand many of the issues and potential options, and also may have built positive relationships that can contribute to reaching consensus. History can also create barriers to cooperation. The assessment suggests it will be necessary for potential participants on the Committee to begin with a “clean slate” to the extent possible, finding ways to avoid simply re-enacting difficult experiences from the past.
- *The future impacts of San Francisco’s Dog Advisory Commission (DAC) process.* The DAC is evaluating the appropriateness of, and in many cases approving, off-leash dog walking in numerous San Francisco parks. The Assessment Team interviewed several DAC members. Under one possible scenario a gradual increase in available options for walking dogs off-leash across the city resulting from DAC decisions would reduce pressures on GGNRA resources. Another possible scenario is that the commitment of people to favorite local off-leash areas, whether in GGNRA or the city, means there would not be any significant effect. Based on the assessment interviews the latter is considered more probable.
- *The impact of GGNRA’s NEPA analysis of different alternatives for off-leash walking.* The NEPA process will go on concurrently with the work of a Committee, and it is likely a draft NEPA document analyzing a set of options, perhaps including a consensus recommendation from the Committee, would be published only after the Committee has completed its work. A Committee cannot reach consensus and expect GGNRA simply to adopt their recommendation because of the requirement for analysis of a range of alternatives under NEPA. For this reason, it will be important for the Committee to interact appropriately with GGNRA’s NEPA team as they seek consensus, in order to gain as much understanding as possible about how a Committee proposal may fare when analyzed under NEPA.
- *The potential for legal action related to off-leash dog walking before or during a regulatory negotiation process, or prior to the conclusion of rulemaking.* Litigation over the restoration process at Fort Funston filed by off-leash advocates several years ago is part of the fabric of the off-leash controversy.¹² While that particular suit is no

¹² *Fort Funston Dog Walkers v. Babbitt*, 96 F. Supp. 2d 1021 (N.D.Cal. 2000).

longer active, other litigation is pending and more is possible.¹³ These lawsuits could prove to have only minor substantive impact on a committee's work, or could have a significant effect on rulemaking by changing the relevant legal framework for decision making. Adversarial litigation could limit the willingness of stakeholders, including government employees, to speak freely during Committee discussions or otherwise provide information. Litigation also could also strengthen the convictions of those who believe it will not be possible to achieve consensus or who would prefer an outright victory.

- *The internal NPS and DOI policy making process for a GGNRA rule.* One of the considerations specified in the Rulemaking Act for the decision whether to form a committee is that “[t]he agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.”¹⁴ The enormous time commitment required of a participant in a committee consistently generates a fundamental question: “Will the agency use our work product or not?” No agency will commit in advance to simply adopting a committee's recommendations, but the Rulemaking Act's language offers a balanced approach that is essential to gaining citizen participation. For this reason, the internal process by which GGNRA, NPS, and the Department of the Interior will reach a policy decision on any recommendation from a Committee is a key variable. The Assessment Team discussed this issue with GGNRA staff during assessment interviews.
- *The outcome of November's elections.* Creating a Committee, participating in the Committee, and addressing recommendations from a Committee in rulemaking are three GGNRA and NPS actions that could be affected by a change of administration resulting from November's elections. There is less likelihood that a continuation of the current administration would have any affect, although that cannot be ruled out.
- *Any significant leadership change within DOI, NPS, or GGNRA.* Apart from the election outcome, any change of top leadership within DOI and the NPS could also affect GGNRA actions related to a Committee and rulemaking. Such changes are not unusual across the federal government following presidential elections, even when there is not change of administration. A change of leadership at GGNRA also could have similar impacts on rulemaking.

¹³ One perspective on legal developments is a web site maintained by off-leash advocates: <http://oceanbeachdog.home.mindspring.com>. The Assessment Team cannot predict the likelihood of further litigation with any confidence.

¹⁴ §563(a)(7)

RECOMMENDATIONS

Summary

Based on the results of interviews with stakeholders representing personal and organizational interests, as well as with GGNRA leadership, we recommend that GGNRA proceed with a negotiated rulemaking process. A significant majority of interviewees, when asked whether they preferred GGNRA conducting a rulemaking on its own following traditional procedures, or a negotiated process where they could be directly involved, preferred the latter. This preference is a key element of the foundation for the Assessment Team's recommendation to proceed. Our recommendation was not obvious at the beginning of the assessment process, and should be considered in the challenging context presented above. Nonetheless, we believe it is appropriate given the circumstances.

Federal Negotiated Rulemaking Act

The Assessment Team used Rulemaking Act guidelines to develop its recommendation to proceed, as follows:

1. *There is a need for a rule [§563(a)(1)].*

GGNRA management, after extensive analysis and in consultation with NPS leadership, has clearly stated that the need exists and that under the current circumstances rulemaking is preferable to relying on existing NPS regulations. Interviews reveal a broad but not unanimous preference for rulemaking. The senior federal panel's report in 2002 buttresses this determination of need in its recommendation that GGNRA pursue rulemaking.¹⁵

2. *There are a limited number of identifiable interests that will be significantly affected by the rule [§563(a)(2)].*

Interviews have identified the interests likely to be significantly affected by a rule. A detailed discussion of these interests can be found in the *Key Interests* section of this report. The universe of significant interests is consistent with forming a negotiated rulemaking committee and building a consensus that reflects those interests.

3. *There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified [under paragraph 2] and are willing to negotiate in good faith to reach a consensus on the proposed rule [§563(a)(3)].*

The Assessment Team specifically asked participants in interviews about their interest in participating, about others who could represent their interests, and about their willingness to negotiate in good faith. We believe balanced, adequate representation of the significant interests on a Committee is a reasonable goal.

¹⁵ See Federal Panel Recommendation §4, p. 7.

4. *There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time [§563(a)(4)].*

It is not possible to guarantee consensus in any situation, particularly where there are significant differences in core values and a history of conflict and adversarial interaction. Most of those likely to participate in a Committee expressed belief that consensus is attainable despite the past if all parties enter the process with a commitment to work constructively. Expressions of doubt more often reflected uncertainty about the motivations of other groups and individuals than one's own commitment to reaching consensus. As noted above, one important factor is that the alternative of having GGNRA write a rule without a committee process—the Best Alternative To a Negotiated Agreement (BATNA)—is not attractive to most people who participated in the assessment.

The Assessment Team's judgment at this time is that a Committee is reasonably likely to achieve a substantial level of agreement on a proposed rule. The Team anticipates that such a proposal will be quite detailed, addressing different locations and situations across GGNRA, and that some differences may prove difficult to resolve. While remaining open to the possibility of perfect consensus—unanimity—the Team recommends that decision makers assume a lower but still significant level of agreement to be a reasonably likely outcome.¹⁶

5. *The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule [§563(a)(5)].*
We anticipate a six- to nine-month negotiated rulemaking process which, in comparison to more traditional approaches to rulemaking, should not unreasonably delay the issuance of a final rule.
6. *The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee [§563(a)(6)].*
GGNRA's leadership expressed their commitment during the assessment process to ensuring adequate resources will be made available to support the project.
7. *The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment [§563(a)(7)].*
This guideline has been reviewed in detail with GGNRA management. In particular, the Assessment Team has emphasized the importance of GGNRA and NPS playing an active role in a Committee and raising any concerns directly with the Committee so that solutions can be developed before a proposed rule is submitted. GGNRA and NPS management understand the importance of this provision and are prepared to make a commitment consistent with this guideline.

¹⁶ The Rulemaking Act proposes a standard of unanimity, or perfect consensus, as a starting point for a committee, but provides for committee members to adopt their own version of consensus. *See* § 562 (2).

Proposed Structure of the Negotiated Rulemaking Committee and Process

The Assessment Team proposes creation of a Negotiated Rulemaking Committee and four supporting subcommittees to achieve the goals of the negotiated rulemaking process. The Committee would be created consistent with legal requirements including FACA. A committee of approximately 20-22 members, including GGNRA, is likely. The make-up of the Committee must provide for a balance across the various perspectives held by individuals and organizations with an interest in the issues.

The proposed subcommittees and their purposes are:

- 1) **Technical Subcommittee** – to identify links between issues and data; to advise the Committee on the availability of data for use in making management decisions about off-leash dog walking; to advise the Committee on the quality of available data; and potentially to recommend data collection initiatives in support of decision making and adaptive management strategies consistent with the Committee schedule.
- 2) **Operations Subcommittee** – to evaluate potential approaches to improving enforcement and enhancing compliance with the rules that emanate from the Negotiated Rulemaking process; this includes identifying strategies and mechanisms to provide sufficient funding. This subcommittee also would consider approaches for supporting maintenance and other operational needs associated with implementation of a new rule.
- 3) **Public Outreach and Education Subcommittee** – to promote public understanding and support for the implementation of any new rule; this subcommittee will focus on developing strategies to ensure the public understands the content and implications of a new rule that reflects the Committee’s consensus recommendations.
- 4) **Implementation Subcommittee** – this fourth subcommittee potentially would focus on concrete issues arising from implementation of a proposed rule, but only if the three subcommittees proposed above were not sufficient to cover those issues. If needed, an Implementation Subcommittee likely would be created later in the regulatory negotiation process, once the shape of a proposed rule is clearer.

An extended collaborative problem solving process must be responsive to changing dynamics during the course of negotiations. With this caveat, the following schedule and process are proposed to achieve the objectives of negotiated rulemaking. This section is intended primarily to give readers and GGNRA decision makers a clear sense of the many choices associated with organizing and supporting a successful negotiated rulemaking. The details of this proposed approach inevitably will be modified. Appendix C to this report provides a general graphic depiction of the proposed process.

Week 1 - Committee Meeting #1

Agenda: provide an overview of the regulatory negotiation process to date, discuss make-up of the Committee, review Committee charter and protocols and confirm commitment, clarify geographic scope for off-leash options and other “sideboards,” confirm committee objectives, provide an overview of the assessment report, describe and discuss the negotiation process, identify key issues to be addressed, discuss proposed subcommittees and membership, reach agreement on decision making process including definition of consensus, discuss the role of objective criteria and data in decision making, address the potential for adaptive management, and discuss linkages to NEPA and related processes.

Week 4 - Technical Subcommittee Meeting #1

Agenda: identify data essential to decision making, review available data, review data by geographic areas, and identify data gaps.

Week 6 - Committee Meeting #2

Agenda: provide an overview of agency mandates, identify potential locations for off-leash dog walking, discuss attributes and limitations by location (possibly use a straw man developed by GGNRA), seek agreement on decision criteria, and discuss outcomes of Technical Subcommittee Meeting #1. Possibly present findings of draft internal scoping report prepared for the concurrent NEPA process.

A joint field trip to all prospective dog walking locations within GGNRA is also recommended at this time.

Week 9 – Technical Subcommittee Meeting #2

Agenda: assess data base for the various sites discussed during Committee Meeting #2.

Operations Subcommittee Meeting #1

Agenda: discuss appropriate levels of enforcement and how to support enforcement; this could include funding options. Identify other operational impacts such as increased maintenance requirements.

Outreach/Education Subcommittee Meeting #1

Agenda: discuss challenges based on prior experiences; identify potential outreach and educational options and opportunities to support potential rulemaking, including needs for signage and other informational materials.

Week 12 - Committee Meeting #3

Agenda: discuss results of subcommittee meetings; using available data and agreed upon decision criteria conduct initial screening of potential locations for off-leash dog walking; begin building consensus on recommendation to GGNRA; begin the discussion of management strategies for each potential site to ensure meeting NPS guidelines.

Week 15 – Subcommittee Meetings

Agenda: each subcommittee will evaluate screened locations from the perspective of their group and begin developing elements of possible management strategies.

Week 19 – NRC Meeting #4

Agenda: receive reports from subcommittees; craft components of proposed rule; continue building consensus around specific locations and management strategies.

Depending on agency preference, GGNRA/NPS staff begin developing technical language consistent with emerging Committee consensus on a recommendation.

Week 23 – NRC Meeting #5

Agenda: review and comment on Committee’s proposed rule as drafted by NPS technical staff.

Week 25 – Implementation Subcommittee Meeting #1

Agenda: discuss steps in implementing the new rule and identify tasks that need to be undertaken in support of the Committee’s consensus recommendation; develop an action plan.

Week 28 – Committee Meeting #6

Agenda: finalize Committee consensus recommendation on proposed rule and agree on the implementation action plan.¹⁷

Charter and Protocols

A Committee will be created by a formal federal charter and its deliberations will be guided by working principles and operating protocols (collectively “protocols”). Protocols will cover attendance at meetings, role of alternates, withdrawal or replacement of a committee member, contact with the media, transparency of related activities outside the process, and communications with constituencies. A proposed set of protocols will be shared with prospective participants as part of ascertaining their willingness to participate, and a commitment to the protocols will be expected as the basis for their appointment on a Committee.

¹⁷ One important point requiring ongoing attention is the relationship of the NEPA process to the Committee’s process. Further information about the likely NEPA and Committee timetables is needed before specific decisions about coordinating the two processes can be made.

Prospective members of the Committee must commit to making a good-faith effort to reach consensus while advocating for the interests of the organization or viewpoints they are chosen to represent. The Assessment Team recommends that all participants make an explicit commitment to discussing constructively the possibility of off-leash dog walking in GGNRA regardless of individual views about whether that use is either legal or appropriate as part of their decision to participate on a Committee.

Potential Committee Members and Alternates

The Assessment Team developed a list of potential candidates to serve on a committee consistent with the goal of balance outlined in the Negotiated Rulemaking Act and provided that information to GGNRA staff. The Assessment Team also discussed with GGNRA the role and selection process for committee alternates. GGNRA and NPS management will decide on the composition of a Committee including alternates consistent with federal law, with the formal appointments to be made by the Secretary of the Interior.

CONCLUSION

The Assessment Team appreciates the opportunity to work with GGNRA and members of the public in this phase of a potential negotiated rulemaking process. The Assessment Team will work with the GGNRA and other assessment participants to ensure this report and recommendations are understood by all potential stakeholders. Subject to a decision by NPS, the Assessment Team will also provide support for activities leading to the initiation of the Negotiated Rulemaking phase of the project.

The Assessment Team wishes to acknowledge the positive response to its interview requests and the flexibility and commitment shown by people in order to participate in the assessment. This support greatly enhanced the assessment process and is appreciated. The Assessment Team also acknowledges the cooperation of GGNRA and Institute staff during the course of the assessment.