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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 GRETCHEN BARLEY, STEPHEN S.
 21 SAYAD, and DONALD KIESELHORST,

22 Defendants,

23 and

24 CENTER FOR BIOLOGICAL
 25 DIVERSITY, ACTION FOR ANIMALS,
 26 ENVIRONMENTAL QUALITY FOR
 27 URBAN PARKS, GOLDEN GATE
 28 AUDUBON SOCIETY, and COLEMAN
 ADVOCATES FOR CHILDREN AND
 YOUTH,

Amici.

Case No.: 04-CR-0408-WHA

AMICI CURIAE BRIEF

Date: May 31, 2005

Time: 2:00 p.m.

Courtroom: 9, 19th floor

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INTRODUCTION

Proposed Amici Center for Biological Diversity, Action for Animals, Environmental Quality for Urban Parks, Golden Gate Audubon Society and Coleman Advocates for Children and Youth (hereinafter "Animal Protection Organizations") are non-profit organizations concerned with the welfare of companion animals, wildlife, and public parks. The Defendants' activity here—running dogs off-leash in the Golden Gate National Recreation Area ("GGNRA")—poses a significant threat to each of these concerns. The Animal Protection Organizations submit this brief to explain how running dogs off-leash in the GGNRA—a park that contains none of the safeguards recommended by responsible animal welfare organizations to insure the safety of off-leash pets—has resulted in needless and preventable injuries and deaths to many dogs in the park; to explain how continued enforcement of the National Park System's leash law at the GGNRA—which protects more federally listed species than any other unit of the National Park System in the continental United States¹—is critically important to the continued existence of the threatened and endangered species in the park; and to explain how the epidemic of off-leash dogs at the GGNRA has subverted the original values Congress sought to protect when it established the park over 30 years ago.

While the National Park Service retains the discretion to ban dogs from the GGNRA altogether because of these threats, the Animal Protection Organizations believe that such a drastic measure is not warranted. Instead—and consistent with the Nation's laws and regulations that have been in place for nearly 60 years—the GGNRA's regulations allowing dogs in most of the park, so long as they are properly leashed, should be upheld. These reasonable regulations protect pets, wildlife, and the park so that the GGNRA's exceptional resources will be preserved for present and future generations to enjoy.

¹ See http://www.nature.nps.gov/biology/endangeredspecies/Top_10_Parks.pdf. Only three National Parks contain a greater number of imperiled species: Haleakala National Park, Hawaii Volcanoes National Park, and Channel Islands National Park. Each of these parks is found on an island, which typically have more endemic species than their continental counterparts. This makes the diversity of life preserved at the GGNRA that much more unique and astounding.

ARGUMENT

I. Running dogs off-leash at the GGNRA puts the welfare of dogs at great risk.

Like riding a motorcycle without a helmet, walking a dog off-leash is an activity that is inherently risky. While the general public is well attuned to the risks an off-leash dog poses to children, the elderly, and wildlife, few people understand that the greatest risk is often borne by the dog itself. At the GGNRA, this has been particularly true: literally hundreds of off-leash dogs have been lost, injured, or killed while roaming the park off-leash.²

The threats facing off-leash dogs in the GGNRA are numerous. High-speed automobile traffic along the Great Highway and Skyline Boulevard borders the park at Ocean Beach and Fort Funston—both of which are places where the GGNRA's leash law is consistently flouted—and dogs have run into traffic, been struck by cars, and killed while walking in the park off-leash.³ High, crumbling cliffs at Fort Funston and Mori Point pose a danger to off-leash dogs, and several dogs have fallen off of, or become trapped upon, the sides of these cliffs, requiring rescue.⁴ At Crissy Field—and for that matter, throughout most of the GGNRA—the landscape is so large and topography so varied that it is not possible to consistently monitor a dog's off-

² This is likely a vast underestimate of the actual number of dogs harmed by off-leash dog walking. This estimate is based solely on incidents that have been reported to the Park Service and subsequently published in an incident report. An unknown number of altercations are never reported to the Park Service; similarly an unknown number of reported altercations are not recorded in incident reports. Thus, it is likely that the actual number of off-leash dogs injured at the GGNRA is substantially higher than the conservative numbers used for the purposes of this brief.

³ For example, on August 13, 2004, a dog was seen in the middle of Skyline Boulevard, causing traffic to swerve out of the way at speeds near 50 miles an hour. See Plater Dec., Ex. A. The dog had escaped from its owner after being walked at Fort Funston, apparently without a leash. *Id.* (noting that no leash was found in the dog owner's possession). Remarkably the dog was returned to its owner unharmed.

However, a German Shepard/Standard Poodle mixed-breed dog was not so lucky. After being walked at Fort Funston, the dog was startled by a loud noise and ran away from its handlers. A few days later the dog was found dead on the side of the road, struck and killed by automobile traffic.

⁴ For example, On December 11, 2004, Park Rangers rescued an off-leash dog that fell off the cliffs at Fort Funston, see Plater Dec., Ex. B; on September 26, 2004, an off-leash Doberman Pinscher was rescued from the cliffs at Fort Funston, along with the dog's owner, see Plater Dec., Ex. C; and on October 11, 2004, a yellow Labrador Retriever ran off the cliffs at Fort Funston chasing a ball, requiring another rescue attempt. See Plater Dec., Ex. D. Additional examples are cited below.

1 leash behavior, and has resulted in numerous lost dogs, dog fights, and bites.⁵ In some portions
2 of the park dogs have even been preyed upon by wild coyotes. See Plater Dec., Ex. E.

3 Because of the risks associated with running dogs off-leash, responsible animal welfare
4 organizations around the country have established minimum standards and essential safeguards
5 to insure that dogs can engage in off-leash recreation without harm. These safeguards include
6 (1) adequate fencing—that dogs cannot dig under or jump over—to insure that dogs will not get
7 lost or wander into dangerous situations; (2) an appropriate acreage so that—if fights or other
8 emergency situations arise—dog owners can quickly reach their pets to address the situation; (3)
9 consistent monitoring to insure that poorly behaved dogs are removed before altercations occur;
10 and (4) regular maintenance to insure that the area remains a clean and healthy place for dogs to
11 play.

12 However, none of these safeguards exist at the GGNRA. For example, there are no
13 fenced off-leash areas in the park, and the primary areas where off-leash dogs are found—Ocean
14 Beach, Fort Funston, and Crissy Field—are enormous areas that dog owners cannot easily
15 monitor or rapidly cover if altercations arise. Absent these basic protections, it is simply
16 irresponsible to take a dog to the GGNRA off-leash.⁶ As shown below, unfortunately, people
17 continue to allow dogs to roam off-leash at the GGNRA, to the detriment of literally hundreds of
18 dogs.

19 **A. Off-leash dogs have been injured and killed at the GGNRA falling off steep
20 cliffs.**

21 The GGNRA contains several scenic properties with towering, wind-swept cliffs that
22 descend steeply to the ocean below. These cliffs are one of the visual splendors of the park, and
23 were mentioned by Congress on numerous occasions when the GGNRA was established. See,

24 ⁵ For example, on September 1, 2004, a Bull Terrier was lost at the South end of Baker
25 Beach. See Plater Dec., Ex. F; on November 16, 2004, a woman was cited for walking at least
26 four off-leash dogs simultaneously at Fort Funston, one of which had previously bitten another
27 dog at the park. See Plater Dec., Ex. G. Additional examples are cited below.

28 ⁶ Indeed, the American Kennel Club, a nationwide organization that promotes responsible
dog ownership and basic good manners for dogs through a “Canine Good Citizenship”
program, actively promotes compliance with leash laws as a cornerstone of responsible dog
ownership. See Plater Dec., Ex. H.

1 e.g., 1972 U.S.C.A.N. 4850, 4852. However, in many places these cliffs are also quite
2 dangerous: their steep windward sides are often hidden from visitors approaching from the
3 leeward side until the last possible moment. Numerous signs warning visitors to stay well away
4 from cliff's edge are thus posted throughout the GGNRA.

5 However, dogs of course do not derive any benefit from these postings, and numerous
6 visitors have watched in horror as their off-leash dog was injured or killed after bounding off the
7 edge of a cliff. Indeed, on January 15, 2005, a park visitor was recreating near the cliffs at Mori
8 Point⁷ with his 1 ½ year old mixed-breed dog. The dog was not wearing a leash. At
9 approximately 2:00 p.m., the dog "ran off" the cliffs at Mori Point, falling nearly 200 feet to the
10 beach below. Although Park Rangers initiated a rescue investigation almost immediately, it
11 took rescuers nearly an hour to locate the dog. At the time it appeared that the dog was in "bad
12 shape but still alive." Unfortunately, by the time the dog was secured for transport and reached
13 the top of the cliffs, "the dog was not moving and appeared to be lifeless." See Plater Dec., Ex.
14 I.

15 Sadly this is not an isolated event at the GGNRA. In the year 2000 alone the GGNRA
16 rescued 15 dogs—along with two dog owners who attempted to rescue their dogs but became
17 stranded themselves—from the cliffs at Fort Funston, a popular but extremely dangerous place
18 for some park visitors to flout the GGNRA's leash law. See Plater Dec., Ex. J. At least two of
19 these dogs were injured, as were two Park Rangers, during the rescue attempts. *Id.*

20 Each of these incidents could have been prevented if the dog owners would have simply
21 used a leash to protect their dog from this threat. A simple leash would have ensured that these
22 pets would not unwittingly bound over the edge of a cliff, protecting the dog's life and keeping
23 Park Rangers from placing their own lives at risk to rescue the off-leash dog.

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27 ⁷ Mori Point is a relatively recent acquisition to the GGNRA located in Pacifica, CA that
28 links the adjacent National Park lands of Sweeny Ridge and Milagra Ridge. Mori Point is
clearly posted with signs explaining that pets must be leashed. See Plater Dec., Ex. I.

1 **B. Off-leash dogs have been involved in literally dozens of dog fights and dog**
2 **bites at the GGNRA.**

3 The GGNRA is renowned for its vast open spaces nestled into a cosmopolitan urban
4 setting. While this open space is an essential component of the park, it presents an immense
5 challenge to individuals who insist on allowing their dogs to roam the park off-leash.
6 Unfortunately, too many dogs and their owners are not up to the challenge, and literally dozens
7 of dogs have been harmed in physical altercations while roaming off-leash. For example, on
8 September 4, 2004, a Pit Bull was off-leash⁸ at Ocean Beach when it attacked another dog and
9 "locked onto it." See Plater Dec., Ex. K. Fortunately the Pit Bull's owner was able to break up
10 the altercation, but the bitten dog was bloodied and suffered injuries to its neck. Id. Just over a
11 month later, a Shepherd-mix bit a Weimaraner, inflicting a wound in the Weimaraner's hind leg
12 that required stitches through several layers of muscle. Both dogs were off-leash, and the owner
13 of the Weimaraner was so far from his dog that he did not even witness the attack. See Plater
14 Dec., Ex. L.

15 In one of the most brazen violations of the GGNRA's leash law, on February 6, 2005,
16 the owners of a large Husky were cited for repeatedly allowing their dog to roam off-leash in the
17 GGNRA near Mori Point—the very place where a dog plunged to its death a month earlier. The
18 dog owner "lets the dog run until he is ready to come home," and claimed that if "it was left
19 alone it would come home." See Plater Dec., Ex. M. When asked to leash the dog by a Park
20 Ranger, the dog owner asserted that the Park Ranger "did not know anything about [this] breed
21 since they do what they want." Id. The dog owner nonetheless attempted to leash the dog for
22 over 10 minutes, but was unable to leash or verbally control the dog. The Park Ranger issued a
23 citation to the dog owner, and warned that the dog could be impounded if it was observed
24 running off-leash in the future. Id.

25
26
27 ⁸ It is not clear from the criminal incident report if the dog was purposefully taken off-
28 leash or if the dog slipped its collar. In either event, the attack could have been prevented if
the dog was properly leashed.

1 A few minutes later, while the Husky was still roaming off-leash in the area, the Park
2 Ranger came across a couple walking their dog on-leash. The couple informed the Park Ranger
3 that they “see that dog running around all the time” and that the Husky “disturbs [our] dog.”
4 Moments later, as the couple continued their hike, the Park Ranger observed the Husky “chase
5 [the couple] and their pet off the trail and into the bushes.” Eventually they escaped the husky,
6 but the dog continued to roam off-leash when the Ranger left Mori Point. Id.

7 These off-leash altercations go on and on: on April 8, 2000, an off-leash dog bit a
8 leashed dog while being walked at Crissy Field, sparking an angry argument between the
9 owners of the two dogs.⁹ See Plater Dec., Ex. N. On September 15, 2004, an off-leash dog
10 came out of the brush near Milagra Ridge and attacked an on-leash dog, biting the thigh and
11 finger of the on-leash dog’s owners. See Plater Dec., Ex. O. The off-leash dog owner defended
12 that her dog “was just playing.” Id. On September 17, 2004, two off-leash pugs attacked and
13 bit a 100-pound Labrador Retriever—which was also off-leash—and the Labrador’s owner. See
14 Plater Dec., Ex. P. Indeed, in the past five years there have been at least 70 reported instances
15 of off-leash dogs biting or attacking other dogs in the GGNRA. All of these incidents could
16 have been prevented if the dogs were properly restrained on leashes.

17 **C. Off-leash dogs pose a particularly acute risk to small dogs, which may be**
18 **victimized by “predatory drift.”**

19 Because dogs have descended from wolves, they contain an innate instinct to hunt.
20 Generally this instinct is expressed in benign activities such as chasing balls, retrieving sticks, or
21

22 ⁹ At first blush it appears difficult to understand how a heated argument could occur when
23 an off-leash dog bites an on-leash dog. After all, it is the failure to restrain the off-leash dog
24 that increases the severity of the altercation. But in what is becoming a hallmark of
25 irresponsible dog ownership at the GGNRA, people who allow their dogs to roam off-leash
26 often blame the on-leash dog for being bitten. They argue that a leash, through physical
27 restraint, causes a dog to act aggressively in a manner that an unrestrained dog would not.
28 This argument, however, has been rejected by reputable animal welfare organizations for
decades. Indeed, the Marin Humane Society recently published an article about so-called
“leash aggression” explaining that it is caused by walking dogs off-leash—i.e., dogs become
accustomed to doing whatever they like when off-leash and therefore throw an aggressive
“canine tantrum” when they are put back on a leash. Dogs that are properly trained on a leash
do not exhibit leash aggression. See Plater Dec., Ex. Q.

1 playing Frisbee. However, evidence is emerging that dogs can have more visceral predatory
2 instincts triggered by other, smaller dogs, particularly when the smaller dog panics or appears
3 injured. This phenomenon is referred to as "predatory drift" because an otherwise well-behaved
4 and obedient dog "drifts" into a predatory mode. According to the San Francisco SPCA,
5 "predatory drift frequently results in serious injury or death" to the smaller prey-dog, because a
6 bite inflicted during predatory drift incidents "is a much more serious kind of bite" than would
7 normally occur in a regular dog fight. See Plater Dec., Ex. R. The risk of a predatory drift event
8 is so great that the San Francisco SPCA refuses to allow people to adopt dogs if they currently
9 own a dog that is less than half the size of the new dog they wish to adopt. Id.

10 When dogs are allowed to roam off-leash, the consequences of predatory drift incidents
11 become particularly dire. Without a leash or other physical restraint on the dog, it can become
12 difficult or impossible to prevent the larger dog from attacking and killing the smaller dog.
13 Small dogs are thus particularly vulnerable to people who walk their dogs off-leash, and thus at
14 this time, with off-leash dogs roaming freely at the GGNRA, it is particularly risky to take a
15 small dog to the park, even on-leash.

16 **II. Running dogs off-leash at the GGNRA puts the welfare of wildlife at great risk.**

17 The GGNRA contains over 100 rare or special status plants and animals. 67 Fed. Reg.
18 1424, 1428 (Jan. 11, 2002). In recognition of the critical importance the GGNRA plays in the
19 conservation of these species, the park was designated as part of the Golden Gate Biosphere
20 Reserve in 1989. Id. In addition, the park contains literally thousands of other species, many of
21 which find refuge in the park as either localized residents or migrating visitors.

22 The GGNRA has a "heightened responsibility to preserve and protect those species and
23 their habitat everywhere they occur within the GGNRA." Id. Unfortunately, the increasing
24 frequency and intensity of off-leash dog walking at the park has made it exceptionally difficult
25 to insure that imperiled species in the park are not jeopardized. Because they are physically
26 unrestrained and cannot understand the sensitivity of the GGNRA's parklands, off-leash dogs
27 are more likely to initiate activities that harm or harass wildlife. And once initiated, harmful or
28 destructive behaviors are more difficult to correct than those of dogs that are on-leash.

1 These impacts are exceptionally acute to shorebirds such as the federally listed Pacific
2 Coast distinct population segment of the western snowy plover ("snowy plover"). The snowy
3 plover is a diminutive shorebird that is in a race against extinction. It is believed that fewer than
4 2,000 adult birds remain in this population. U.S. Fish and Wildlife Service, Western Snowy
5 Plover Pacific Coast Population Draft Recovery Plan, p.7 (2001) (available at
6 <http://pacific.fws.gov/ecoservices/endangered/recovery/snowyplover/>) (hereinafter "Recovery
7 Plan"). However, despite the fact that potential nesting habitat for the snowy plover exists in the
8 GGNRA; despite the fact that between 20 and 85 snowy plovers reside at Ocean Beach during
9 the winter; and despite the fact that snowy plover nests have been found on private lands north
10 and south of the park's boundaries, no snowy plovers are believed to be nesting within the Park.
11 GGNRA, Draft Snowy Plover Management Plan, Ocean Beach, San Francisco, p. 14, 48 (1998)
12 (Plater Dec., Ex. S). While pre-nesting activity has occurred at Ocean Beach, the nests have all
13 failed, most likely because of the "intense level of recreation activity on the beach." Id. at 48.
14 Of these recreational activities, "unleashed pets represent the most significant recreational threat
15 to wintering snowy plovers . . . because of the prolonged and repeated disturbance created when
16 they chase birds." Id. at 21.

17 Snowy plovers are believed to be particularly sensitive to disturbance by off-leash
18 dogs.¹⁰ Lafferty, Kevin D. Birds at a Southern California Beach: Seasonality, Habitat Use and
19 Disturbance by Human Activity, 10 Biodiversity and Conservation 1949, 1960 (2001), See
20 Plater Dec., Ex. DD. Unfortunately snowy plovers face nearly constant harassment by off-leash
21 dogs at Ocean Beach. Park scientists estimate that snowy plovers are intentionally chased by
22 dogs 400 times each winter. Draft Snowy Plover Management Plan, Ocean Beach, San
23 Francisco, at 22. When flushed, snowy plovers must spend vital energy on "vigilance and
24 avoidance behaviors at the expense of foraging and resting activity." Recovery Plan, p. 58.
25 This in turn results in decreased accumulation of the energy reserves necessary for snowy

26
27 ¹⁰ Off-leash dogs are about twice as likely to disturb snowy plovers as leashed dogs.
28 Lafferty, Kevin D. Disturbance to Wintering Western Snowy Plovers, 101 Biological
Conservation 315, 323 (2001), See Plater Dec., Ex. EE.

1 plovers to complete their annual migration and to successfully breed. *Id.* Off-leash dogs can
2 thus negatively impact the survivorship and fecundity of individual birds by simply chasing
3 them.

4 The Park Service's incident reports of off-leash dogs harassing shorebirds are
5 voluminous.¹¹ For example, on February 1, 2005, during the snowy plover's residence at Ocean
6 Beach, a Park Ranger witnessed an off-leash dog running along the high tide mark and "chasing
7 birds from the flotsam as it went along." *See* Plater Dec., Ex. Y. The Park Ranger contacted the
8 owner of the dog, and after ascertaining that the owner was providing false information to him,
9 informed the owner that the park had "concerns with pots off-leash within the Snowy Plover
10 habitat area" and proceeded to write the dog owner a ticket. The dog owner then became
11 "belligerent" and claimed that the Park Ranger was only issuing the citation "because [the dog
12 owner] is Korean." *Id.*

13 Similarly, on April 15, 2000, a large Doberman Pinscher was seen giving chase to a
14 killdeer—another small shorebird—in Crissy Field's designated Wildlife Protection Area,
15 "almost catching it in its jaws." The killdeer was attempting to defend its nest. *See* Plater Dec.,
16 Ex. Z. Half an hour later, another off-leash dog approached the killdeer and "almost grabbed
17 [the] killdeer in [its] mouth" as the killdeer attempted to lead the dog away from its nest. The
18 chase lasted over 30 seconds. *Id.* at 2. On April 17, 2000, the killdeer nest was found destroyed
19 and the eggs gone, "with fresh dog prints and scuff marks atop [the] former nest area." *Id.* at 3.

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22 ¹¹ To list a few: on November 21, 2004, a Park Ranger witnessed a dog-owner throwing a
23 ball for his off-leash dog at Ocean Beach, which promptly ignored the ball but "started
24 running after [a] bird instead, causing the bird to fly away." *See* Plater Dec., Ex. T. On
25 October 26, 2004, a Park Ranger witnessed an off-leash dog run through a group of shore
26 birds "multiple times, causing the birds to scatter, without the owner noticing." *See* Plater
27 Dec., Ex. U. On January 22, 2002, an off-leash Golden Retriever growled and barked at a
28 horseback rider, and then chased birds off the beach. *See* Plater Dec., Ex. V. On January 9,
2004, an off-leash dog jumped into the Sutro Baths and began chasing after a bird, which had
to take flight to avoid being caught by the dog. *See* Plater Dec., Ex. W. And on October 10,
2004, a small off-leash dog chased a shorebird at Ocean Beach for approximately 50 yards.
When the dog returned to his owner the dog received a treat. *See* Plater Dec., Ex. X. It is
unclear if the dog received the treat for chasing the bird or for returning to its owner.

1 Unfortunately it is not only shorebirds that are being impacted by roaming off-leash
2 dogs. The highly imperiled mission blue butterfly, and the habitats upon which the species
3 depends, are also being impacted by off-leash dogs. See Plater Dec., Ex. AA. Protected marine
4 mammals are regularly harassed and even bitten by off-leash dogs, and the endangered tidewater
5 goby, as well as imperiled salmon, are also believed to be impacted by off-leash dogs. 67 Fed.
6 Reg. 1428.

7 These impacts need not occur. Dogs and imperiled wildlife can coexist at the GGNRA,
8 but only if the GGNRA's reasonable leash law is upheld and enforced. See Plater Dec., Ex. S at
9 23 (Even the snowy plover may coexist with dogs but only "if significantly higher levels of
10 [leash law] compliance can be achieved").

11 **III. Allowing dogs to roam off-leash at the GGNRA is inconsistent with the purposes**
12 **and goals of this National Park.**

13 The GGNRA is one of our country's boldest conservation experiments. Congress
14 squeezed the nation's largest urban park between some of the most expensive real estate in the
15 country, a refuge for wildlife and city dwellers alike.

16 The experiment has largely worked. The GGNRA has become synonymous with the
17 high quality of life San Franciscan's hold dear, intertwined with our identity as much as the
18 Golden Gate Bridge and the 49ers. It props-up property values, provides recreational
19 opportunities for thousands of visitors, and creates an oasis for a variety of wildlife species.

20 The boldness of Congress' urban national park experiment was evident from the
21 inception of the GGNRA. Congress noted that, although regional and local parks such as
22 Golden Gate Park and the Berkeley Hills provide much needed recreation space for the Bay
23 Area, there was still a need to bring the values preserved in the National Park System closer to
24 people. Congress found that "many families in this urban impacted area do not enjoy the
25 affluence which would enable them to take advantage of the outdoor recreation areas located
26 even as close as the Point Reyes National Seashore," and that while the GGNRA "will not add
27 significantly to the open lands in the city, [] it will ensure its continuity as open space for the use
28

1 and enjoyment of present and future generations of city-dwellers." 1972 U.S.C.C.A.N. 4850,
2 4851-52.

3 The cornerstone of Congress' national urban park experiment was to insure that the
4 GGNRA was not managed as if it were another city playground or ball field. Instead, Congress
5 commanded that the GGNRA be preserved "as far as possible, in its natural setting, and protect
6 it from development and uses which would destroy the scenic beauty and natural character of
7 the area." 16 U.S.C. § 460bb (emphasis added). As such, Congress further commanded that
8 recreational and educational uses "shall" only occur if they are "consistent with sound principles
9 of land use planning and management." *Id.*

10 The legislative history makes clear that Congress suspected, but did not mandate, that
11 certain uses may be compatible with sound management of the park. For example, Congress
12 suggested that park visitors might "fly kits [sic], sunbathe, walk their dogs, or just idly watch the
13 action along the bay" while visiting Crissy Field. 1972 U.S.C.C.A.N. at 4852. However,
14 contrary to the Defendants' assertion in its Opening Brief, p. 25, nowhere in the National Park
15 Service's Organic Act, the act establishing the GGNRA, or in the relevant legislative history did
16 Congress suggest that off-leash dog walking should be allowed; indeed, given that Congress
17 must have been aware that the National Park System had a nationwide regulation requiring all
18 dogs to be on-leash while visiting National Parks at the time the GGNRA was created, the only
19 reasonable conclusion from this portion of the legislative history is that Congress contemplated
20 people walking their dogs on-leash while visiting Crissy Field. See Miles v. Apex Marine
21 Corp., 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it
22 passes legislation."); United States v. Hunter, 101 F.3d 82, 85 (9th Cir. 1996) (Ninth Circuit
23 "presume[s] that Congress is knowledgeable about existing law pertinent to the legislation it
24 enacts.") (internal quotations omitted).

25 Nor does the fact that Congress established the GGNRA as a National Recreation Area,
26 rather than a National Park, change the applicable principles of land management. As a
27 preliminary matter, Congress mandated that the GGNRA be managed in accordance with the
28 National Park Service's Organic Act, 16 U.S.C. § 1 et seq., as amended and supplemented. 16

1 U.S.C. § 460bb-3. The Organic Act itself requires that all units of the National Park System be
2 managed "to conserve the scenery, and the natural and historic objects, and the wildlife therein
3 and . . . leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1.
4 Furthermore, in the past when the National Park System attempted to manage Recreation Areas
5 in a less protective manner, Congress amended the Organic Act to prohibit such artificial
6 distinctions:

7 [T]he national park system, which began with establishment of
8 Yellowstone National Park in 1872, has since grown to include
9 superlative natural, historic, and recreation areas in every major region
10 of the United States . . . ; that these areas, though distinct in character,
11 are united through their inter-related purposes and resources into one
12 national park system as cumulative expressions of a single national
13 heritage; . . . and that it is the purpose of this Act to include all such
14 areas in the System.

15 16 U.S.C. § 1a-1. (emphasis added). As pointed out in Bicycle Trails Council v. Babbitt, 1994
16 U.S. Dist. LEXIS 12805 (N.D. Cal. 1994) (aff'd, 82 F.3d 1445 (9th Cir. 1996)), a case that dealt
17 specifically with management at the GGNRA, "[the National Park Service] interpreted
18 Congress's amendments to the Organic Act to be clear in the message that [the National Park
19 Service] . . . was to manage all units of the park system so as to effect the purpose of the organic
20 Act—primarily resource protection." Id. at *18.

21 Thus, when reviewing the appropriateness of potentially incompatible recreational
22 activities in the GGNRA, it is important to recall that the essential purpose of Congress' urban
23 national park experiment is to bring wildness closer to people. The GGNRA gives people who
24 otherwise cannot or will not drive to Death Valley or Yosemite an opportunity to be exposed to
25 things more than human. This of course applies to those without the fiscal resources to travel to
26 our distant National Parks, but it also provides opportunities for the over-worked and time-
27 stressed individuals who, because of life's daily grind, cannot scrape the time together to visit
28 far-away places. For these individuals and the rest of us living in civilization, urban national
29 parks such as the GGNRA provide an oasis of hope for a sustainable society. As Congress
30 recognized, National Parks, as opposed to city, county, regional, or even state parks, are

1 uniquely positioned to make this vision become reality because of their greater resources, their
2 relative insulation from political whims, and their less-parochial outlook.

3 National Parks such as the GGNRA cannot accomplish this purpose while
4 simultaneously accommodating all forms of recreation enjoyed by the public without restriction.
5 The National Park Service has thus recognized that the role of the National Park System is to
6 "provide opportunities for forms of enjoyment that are uniquely suited and appropriate for the
7 superlative natural and cultural resources found in the parks" and that the park service will
8 "defer to local, state, and other . . . organizations to meet the broader spectrum of recreational
9 needs and demands." 67 Fed. Reg. at 1427. In San Francisco, the GGNRA's reliance on the
10 city of San Francisco to provide off-leash recreation opportunities is well founded. The City of
11 San Francisco now contains over 29 designated off-leash areas throughout the city, and in 2002
12 the city adopted a final "Dog Policy" for expanding off-leash recreation into even more portions
13 of the city. Available at http://www.parks.sfgov.org/site/recpark_index.asp?id=2181.

14 **IV. The situation at the GGNRA has been exacerbated since Judge LaPorte's Order.**

15 As shown above, off-leash dogs in the GGNRA are having significant impacts on the
16 welfare of dogs, wildlife, and the park itself. The Park Service has been making a valiant
17 attempt to protect dogs, wildlife, and the park from off-leash dogs—and in particular to protect
18 park users from the outlandish activities highlighted above—but the task has become almost
19 Sisyphean. Irresponsible dog owners continuously flaunt the GGNRA's regulations established
20 to insure the safety of pets and wildlife, and law enforcement officials have been unable to
21 dedicate enough resources to insure that the leash law is complied with throughout the park.
22 When the park is able to enforce existing laws, Park Rangers are often presented with false
23 information or met with intimidation tactics to try and subvert the GGNRA's enforcement
24 process.

25 Unfortunately Magistrate Judge LaPorte's Order below has already made it even more
26 difficult for the park to cite dog owners who allow their dogs to roam off-leash and impact park
27 resources. For example, on December 12, 2004, a Park Ranger was attempting to explain the
28 importance of the leash law to six dog walkers who had their dogs off-leash. These individuals

1 "surrounded" the Park Ranger and attempted to debate the Park Ranger about the Magistrate's
2 Order in an "openly hostile demeanor." See Plater Dec., Ex. BB. In order to prevent the
3 contact from escalating "into a fracas requiring additional units, [the ranger] departed the area."
4 Id. Similarly on March 1, 2005, Park Rangers found a dog owner with three off-leash dogs
5 sitting off-trail in sensitive butterfly habitats, only a few hundred yards away from posted signs
6 that contain leash law requirements and information about the endangered mission blue
7 butterfly. See Plater Dec., Ex. CC. When told of the infraction, the dog owner became
8 argumentative and stated "[w]e beat you at Fort Funston, and at Crissy Field, we don't have to
9 leash our pets." Id. He continued, "the leash law was abolished and only applied to a few
10 parks." Id.

11 These confrontational attitudes, emboldened by the dismissal of the citations at issue
12 here, are making it difficult for Park Rangers to protect park resources from the impacts noted
13 above. If not overturned, the GGNRA's ability to protect pets, wildlife, and the park itself from
14 the threats imposed by off-leash dogs will be greatly diminished.

15 CONCLUSION

16 For the foregoing reasons, the Animal Protection Organizations request that the Court
17 reverse the dismissal of the citations and grant the GGNRA full authority to enforce the leash
18 law.

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20 Respectfully submitted this 7th Day of April, 2005,
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