



PRESIDIO TRUST

4310-4R-P

36 CFR Part 1002

Public Use Limit on Commercial Dog Walking

AGENCY: The Presidio Trust.

ACTION: Final rule.

SUMMARY: The Presidio Trust (Trust) is adopting an interim rule imposing a public use limit on persons who are walking four or more dogs at one time in Area B of the Presidio of San Francisco (Presidio) for consideration (Commercial Dog Walkers). The limit will require any such Commercial Dog Walker in Area B to possess a valid commercial dog walking permit issued by the National Park Service (NPS), Golden Gate National Recreation Area (GGNRA). Commercial Dog Walkers will be allowed a maximum of six dogs at any one time. Commercial Dog Walkers will be required to comply with the terms and conditions of the GGNRA permit as well as those rules and regulations otherwise applicable to Area B of the Presidio, and to visibly display their badges when engaging in commercial dog walking activities within Area B. To obtain a GGNRA permit, applicants must submit a business license, proof of liability insurance, and proof of dog-handling training from an existing training course provider (such as the San Francisco SPCA). The GGNRA commercial dog walking permit requirement is a compendium amendment for all GGNRA sites in San Francisco and Marin Counties that allow dog walking, and is being implemented concurrently with the Trust's rule. Both are interim actions and will remain in effect until the final special regulation for dog walking in the GGNRA is adopted as anticipated in late 2015, at which time the Trust expects that it will adopt a final rule following

public input and comment. The Trust is no longer pursuing its proposed rule on Commercial Dog Walkers published in the Federal Register on November 21, 2012.

DATE: This rule will become effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT: John Pelka, Compliance Manager, Presidio Trust, 415.561.5300 or commercialdogwalking@presidiotrust.gov.

SUPPLEMENTARY INFORMATION: Effective July 1, 2013, the City and County of San Francisco (City) passed legislation requiring Commercial Dog Walkers to carry a valid annually renewed dog walking permit issued by the San Francisco Department of Animal Care & Control. Under 36 CFR 1001.5, the Trust may impose reasonable public use limits in Area B, given a determination that such action is necessary to maintain public health and safety, to protect environmental or scenic values, to protect natural or cultural resources, or to avoid conflict among visitor use activities. On November 21, 2012, in direct response to the City's commercial dog walking regulations, the Trust requested public comment on a proposed rule and use limit on Commercial Dog Walkers (77 FR 69785). The limit would have required Commercial Dog Walkers in Area B to possess a valid dog walking permit from the City. By the close of the comment period roughly one-half of the comments received expressed support of the public use limit, and roughly one-half were opposed. Opposition included the recommendation that the Trust should not adopt the proposed use limit until such time as the GGNRA published its own policies and requirements on Commercial Dog Walkers. They further requested the Trust to work with the GGNRA and "come out together with one system clearly defined." They urged that "a single, clear rule for federal park properties that can be widely broadcast to dog walkers

in the area will allow for more efficient administration, greater compliance, and reduced impacts to Trust resources.”

In a February 25, 2013 letter to the Trust, the GGNRA stated its support for the Trust’s public use limit. The GGNRA disagreed, however, with the number of dogs allowed under the City permit (up to eight), and argued that a limit of six dogs is more reasonable, and is consistent with the NPS’s understanding of the standard practice for the majority of local land management agencies that regulate commercial dog walking. In reaction to the City’s program and the Trust’s proposal, the GGNRA stated it would consider enacting an interim commercial dog walking permit system, before completing its dog management planning process and rulemaking. Given the Trust’s and the GGNRA’s shared management responsibilities within the Presidio, the GGNRA asked the Trust to consider adopting its interim permit system rather than that being implemented by the City.

On May 30, 2013, the Trust announced on its website that it supported the GGNRA’s proposed intention to move forward at this time to create and implement an interim permit system to regulate commercial dog walking within the park. After having examined all public comments and considered the new information provided by the GGNRA, the Trust agreed to suspend its own decisions regarding the regulation of commercial dog walking. Before taking any action, the Trust also offered to provide the public with an additional opportunity to comment.

Accordingly, the Trust will no longer consider going final with its proposed rule published in the Federal Register on November 21, 2012 (77 FR 69785) requiring Commercial Dog Walkers in Area B to possess a valid permit from the City.

On March 14, 2014, the GGNRA provided 30-day public notice

(<http://www.parkplanning.nps.gov/projectHome.cfm?projectID=46523>) of its intent to establish

an interim permit requirement for Commercial Dog Walkers, with a limit of six dogs, on GGNRA lands in San Francisco and Marin Counties. The GGNRA's permit system for GGNRA lands became effective June 2, 2014, and the Trust will honor GGNRA permits in Area B. The annual permit cost consists of a \$75 application fee and a \$300 per person fee for a non-transferrable badge. Permit holders will be able to use any GGNRA and Trust lands where dog walking is allowed. The interim permit requirement will remain in effect until a final special regulation addressing dog walking and commercial dog walking in the GGNRA is finalized, which is expected in late 2015. The GGNRA permit requirement is being implemented through an amendment to the GGNRA Compendium. Public notification of the decision will occur through outreach to Commercial Dog Walkers, signage, and the GGNRA's website.

On March 19, 2014, the Trust published in the Federal Register its proposed interim rule (79 FR 15278) to limit Commercial Dog Walkers in Area B, intended to be enacted in concert with the GGNRA interim restriction. The public use limit was also announced on the Trust's website (<http://www.presidio.gov/about/Pages/commercial-dog-walking.aspx>) and in its e-newsletters. The notice indicated the Trust's shared concern with the GGNRA about the possible effects of the City's action on Presidio users and resources, and the Trust's intent to adopt the GGNRA's interim permit system. A unified approach will provide consistency within unmarked Trust-GGNRA boundaries within the Presidio, and fulfill the joint visitor experience and resource protection mandates of the two Federal land management agencies. Prior to implementation, the Trust will coordinate with the GGNRA on its education campaign to alert Commercial Dog Walkers and others about the public use limit. The Trust will also post signs and provide the U.S. Park Police with handouts in Area B to notify Commercial Dog Walkers of the public use limit in areas where dog walking is a particularly high-use activity.

The Trust accepted public comment on the proposed interim rule through May 5, 2014. During the comment period, the Trust received 31 individual comments on the proposal from four organizations and 24 individuals. Twelve commenters (43 percent) expressed support for the proposed interim rule, and 16 (57 percent) were opposed. Comment letters are available for review at the headquarters of the Trust, and constitute part of the administrative record for the rulemaking.

Summary of Comments

Number of Dogs

Comment: Comments were received requesting that more than six dogs be allowed. Other comments asked to require fewer than six dogs, citing concerns with a Commercial Dog Walker's ability to control up to six dogs, or more. There were concerns with impacts to commercial dog walking businesses and with impacts to adjacent parks from limiting the number of dogs to six. Comments also requested greater consistency with dog limits set by the City.

Response: The rationale as to why the limit of eight dogs as adopted by the City is inappropriate for the GGNRA is provided in the GGNRA's Categorical Exclusion and attachments. The GGNRA's limit of six dogs is based on public comment, feedback from the GGNRA Negotiated Rulemaking Committee for dog management, park staff observations, research on national and international best practices and law enforcement experience. The Trust feels that adopting the City's eight-dog limit would engender public confusion given the shared jurisdictions of the GGNRA and the Trust with an unmarked boundary within the Presidio.

Regarding impacts to commercial dog walking businesses, the proposed action does not restrict access to any sites, does not restrict the area available within a site, does not impose time of use requirements, and imposes relatively minor permitting, insurance and numerical requirements on Commercial Dog Walkers. Commercial Dog Walkers retain the flexibility to avoid the proposed restriction and permit fees by opting to use one or more of the available open space lands maintained by the San Francisco Park and Recreation Department, the Port of San Francisco, and the San Francisco Public Utilities Commission. Among these lands are 28 specifically designated off-leash park areas for dogs throughout the City, including the Mountain Lake Park Dog Play Area that is immediately adjacent to Area B (see <http://sfrecpark.org/parks-open-spaces/dog-play-areas-program/> for a location map for specified areas and for information on the process for establishment of additional off-leash areas within the City's park system). Should Commercial Dog Walkers choose to use Trust lands, the permit cost will only average just over \$1.00 per day, per year. It is expected that Commercial Dog Walkers could pass this expense to their clients, and thus there could be a negligible effect on their income. To walk the same number of dogs walked prior to the proposed six-dog limit, Commercial Dog Walkers may have to increase the number of trips, which could increase their transportation costs. However, the overall net change in Commercial Dog Walker trips, and thus transportation costs, is expected to be relatively minor, and will not have a significant impact.

Finally, the City's restriction on commercial dog walking will minimize the possible re-distributional effects of this interim action. Some Commercial Dog Walkers may prefer to use City lands, in that they are allowed an additional two dogs per walker under the City's permit. However, the difference is not expected to result in a significant amount of displacement from Trust lands to San Francisco-managed sites. And, while the City's Department of Animal Care

and Control enforces a limit of eight dogs, their commercial dog walking informational pamphlet recommends not more than six. The City's ordinance prohibiting dogs in all sensitive habitat areas, athletic fields, tennis/basketball/volleyball courts, children's play areas, and other key areas prohibited by Park Code Section 5.02 will further minimize impacts to park users and park resources.

Training and Certification Requirements:

Comment: Concerns were expressed regarding training and certification in order to obtain the commercial dog walking permit. Some commenters noted that experienced Commercial Dog Walkers do not need required training and certification, and expressed a desire for the GGNRA to honor the City's training and certificate requirements to relieve any financial burden and promote efficiency. Other commenters noted that training and certification promotes responsibility, safety and education.

Response: Training and certification are important components of any permit program. The GGNRA has, however, sought to streamline training and certification where possible. If a commercial dog walking applicant wishes to engage in commercial dog walking activities in the Presidio, the Commercial Dog Walker must either complete one of the courses accepted by San Francisco Animal Care and Control or show proof of three consecutive years as a Commercial Dog Walker in good standing. If the Commercial Dog Walker has completed one of the courses in the past, s/he will not need to re-take it, but rather must provide documentation of completion to the GGNRA as part of their application process.

Permit Costs and Financial Burden

Comment: Some commenters expressed concerns regarding the permit fee, which they believed was too high and unfair, and as public land, should be reduced or removed. Some commenters noted that the required fee would create a financial burden for their businesses.

Response: The GGNRA is expressly authorized by statute to recover costs related to special park uses. Under the authority of 16 U.S.C. 3a, the GGNRA may recover from a permittee the agency's costs incurred in processing a Special Use Permit application and monitoring the permitted activity. The GGNRA informs applicants early in the process that they will be responsible for reimbursing the park for all costs incurred by the park in processing the application and monitoring the permitted activity. The annual commercial dog walking (CDW) permit fees are based on cost recovery estimates relating to the management and administration of CDW permits. For the 2014 permit, which will be valid through January 31, 2015, the \$300 Company Badge fee, however, will be prorated according to the date of issue. Because the permit fee to be assessed by the GGNRA is based on the actual costs of administering the program, the fee is fair for a special use authorized in a national park setting.

Timing of the Proposal

Comment: Some commenters expressed concerns that there would not be enough time for commercial dog walking businesses to prepare for implementation, complete the application process and obtain a permit.

Response: Application forms were released on May 27, 2014. The GGNRA began processing permit applications on June 2, 2014. The GGNRA is issuing permits no longer than 30 days after receipt of completed qualifying applications. Applicants who have submitted completed

application packages were given a “reference number” as proof they have begun the process while they waited to receive the permit and badge. A transition period was implemented until July 15, 2014, for enforcement to allow submission of permit application packages and receipt of the GGNRA permit. The Trust is also providing a transition period until October 1, 2014 to allow Commercial Dog Walkers in Area B to gather the supporting documentation and file the permit application package with the GGNRA.

Inappropriate Use of National Environmental Policy Act (NEPA) Categorical Exclusion

Comment: Several commenters expressed concerns that the use of a Categorical Exclusion (CE) is inappropriate because the impacts of this proposed action would be significant, and therefore a thorough environmental review under the NEPA is required. Two of these commenters requested that the action be compared against a fictional baseline in which there is no commercial or private dog walking.

Response: This action is short-term in nature, limited in both duration and scope, and will only remain in effect until the final special regulation for dog walking in the GGNRA is adopted. The action simply seeks to manage and minimize the impacts of an existing use. The proposed action will only affect Commercial Dog Walkers, a subset of the dog walking that occurs on Trust lands. The proposed action does not ban commercial dog walking; it allows the use to continue, with the requirement of a permit for those with more than three dogs, and a limit of six dogs, in Area B. Because this interim action limits the number of dogs per Commercial Dog Walker, it potentially allows greater control of dogs. More effective dog management through this interim action will result in primarily beneficial effects to park visitors and public health and safety, and to wildlife, including sensitive species. Without this interim action, it is reasonably expected that

Trust lands could see an increase in the amount of Commercial Dog Walkers with large groups of dogs, which in turn would affect the use and enjoyment of park lands by other visitors, including non-commercial dog walkers.

Forecasting impacts against a fictional baseline would artificially inflate impacts, as such a no commercial dog walking baseline does not reflect the well-established reality on the ground in the GGNRA. Instead, in determining level of impact, the GGNRA's environmental review, which the Trust relied on in categorically excluding the action, compared its proposal to the existing condition, in which commercial dog walking inside the GGNRA is unregulated, with no numerical caps, permitting, training, or insurance requirements, and where commercial dog walking external to the GGNRA is regulated. When comparing this interim action to the existing condition of unregulated use, this interim action is beneficial to park resources, with minimal impacts to adjacent areas as described above, and in the GGNRA's administrative record for the project.

Consistency with the Presidio Trust Management Plan and Other Policies

Comment: Some commenters expressed concerns that the interim action is inconsistent with the Presidio Trust Management Plan (PTMP), noting that the PTMP is aimed at preserving the natural and historic resources of the Presidio and protecting the park experience for future users.

Response: The 2002 PTMP did not address commercial dog walking, thus this interim action is not inconsistent with the plan. The PTMP requires the Trust to consider the type and level of visitor use that can be accommodated while sustaining desired resource and visitor experience conditions, which is the intent of this proposed interim rule. The PTMP urges the Trust to work

cooperatively with the NPS in areas of joint concern and interest for the overall management of the Presidio. The interim action is a joint collaboration with the NPS for commercial dog management within the Presidio.

This interim action, which reduces the number of dogs that any one Commercial Dog Walker can handle at one time, will not adversely affect, and is likely to have a beneficial effect on natural, aesthetic and cultural values of Trust lands. Accordingly, this interim action furthers the policies contained within the PTMP which direct the Trust to preserve the natural, historic, scenic, cultural and recreational resources of the Presidio and to maintain an atmosphere that is open, inviting and accessible to visitors.

Regulatory and Environmental Compliance

Regulatory Impact: The interim rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local or tribal governments or communities. The interim rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of the interim rule. Because the rule is not “economically significant,” it is not subject to review by the Office of Management and Budget under Executive Order 12866 or Executive Order 13536. The interim rule is not a “major rule” under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 et seq.

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that the interim rule will not have a significant economic effect on a substantial number

of small entities. The economic effect of the rule is local in nature and negligible in scope, restricting only a single use (commercial dog walking) in a limited geographic area (Area B of the Presidio occupies less than four percent of the City's total acreage) for purposes of protecting public health and safety and the natural environment. There will be no loss of significant numbers of jobs, as Commercial Dog Walkers will retain the flexibility to avoid the public use limit and permit fees by opting to use one or more of the available open space lands maintained by the San Francisco Park and Recreation Department, the Port of San Francisco, and the San Francisco Public Utilities Commission (see <http://sfrecpark.org/parks-open-spaces/dog-play-areas-program/>).

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that the interim rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities.

Environmental Impact: The NEPA and the Trust's NEPA regulations (36 CFR 1010.16) encourage cooperation with other governmental agencies in the preparation of environmental analyses and documentation. Furthermore, the adoption of one Federal agency's environmental document by another Federal agency is an efficiency that the Council on Environmental Quality (CEQ) regulations provide (40 CFR 1506.4, 1500.4(k) & (n)). The Trust is a cooperating agency with special expertise for the GGNRA interim commercial dog walking permit requirement (as well as the special regulation for dog walking) under the NEPA and the CEQ regulations (an agency is considered to have special expertise when it has a related "statutory responsibility, agency mission, or ... program experience" (40 CFR 1508.26)). At the request of the GGNRA, the Trust participated in the development of the interim permit requirement from the outset. For

the NEPA process, the Trust assisted the GGNRA in the preparation of a Project Description and Environmental Screening Form and assumed co-responsibility for its scope and content to ensure that the form met the standards for an adequate analysis under its NEPA regulations. The form disclosed that no measurable adverse environmental effects will result from the actions, and no extraordinary circumstances are involved that may have a significant environmental effect (<http://www.parkplanning.nps.gov/documentsList.cfm?projectID=46523>).

The Trust's NEPA regulations contain categories of actions that do not require an environmental assessment or environmental impact statement. 36 CFR 1010.7(a)(31) provides that "minor changes in programs and regulations pertaining to visitor activities" may be categorically excluded under the NEPA. The regulatory actions by the GGNRA and the Trust regarding interim commercial dog management for Areas A and B are substantially the same. Having independently reviewed the GGNRA's Project Description and Environmental Screening Form for adequacy under its NEPA regulations and having considered the public comments, the Trust has adopted the form as the environmental document prepared for this action, has made it part of the administrative record of the rulemaking, and has categorically excluded the action from further NEPA analysis.

Other Authorities: The Trust has drafted and reviewed the interim rule in light of Executive Order 12988 and has determined that it meets the applicable standards provided in secs. 3(a) and (b) of that Order.

List of Subjects in 36 CFR Part 1002

National parks, Natural resources, Public lands, Recreation and recreation areas

For the reasons set forth in the preamble, part 1002 of Title 36 of the Code of Federal Regulations is amended as set forth below:

PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

1. The authority citation for part 1002 continues to read as follows:

Authority: 16 U.S.C. 460bb note.

2. Add § 1002.6 to read as follows:

§ 1002.6 Commercial dog walking.

(a) The walking of more than six dogs at one time by any one person for consideration (commercial dog walking) is prohibited within the area administered by the Presidio Trust.

(b) The walking of more than three dogs, with a limit of six dogs, at one time by any one person for consideration (commercial dog walking) within the area administered by the Presidio Trust, where dog walking is otherwise allowed, is hereby authorized provided that:

(1) That person has a valid commercial dog walking permit issued by the Golden Gate National Recreation Area (GGNRA);

(2) The walking of more than three dogs, with a limit of six dogs, is done pursuant to the conditions of that permit; and

(3) The commercial dog walker badge issued to the permittee by the GGNRA shall be visibly displayed at all times as directed in the permit while the permittee is engaging in commercial dog

walking activities, and shall be provided upon request to any person authorized to enforce this provision.

Dated: August 11, 2014.

Karen A. Cook,

General Counsel

[FR Doc. 2014-19514 Filed 08/18/2014 at 8:45 am; Publication Date: 08/19/2014]