

PAUL HASTINGS

1(415) 856-7070
chriscarr@paulhastings.com

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Via E-Mail

Wes Samples
Assistant United States Attorney
United States Attorney's Office
Northern District of California
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102
Wes.Samples@usdoj.gov

Re: Save Our Recreation et al v. U.S. Department of the Interior et al., Case 4:19-cv-08108-KAW –
Continuing Deficiencies in FOIA Response

Dear Wes:

We and our clients have once again reviewed the Schifsky and Strickfaden Declarations and the documents produced. While we appreciate the Declarations provided, we have identified the following continuing deficiencies in the government's FOIA response.

Redactions

We believe that many of the records provided contain improper redactions that are inconsistent with FOIA. The case law is clear that FOIA's statutory exemptions must be "narrowly construed." *Milner v. Dept. of Navy*, 562 U.S. 562, 565 (2011). Nevertheless, based on available information it appears that many of the redactions are not justified by any applicable exemption. And to the extent the agencies are relying upon Exemption 5 (deliberative process privilege) to withhold or redact portions of documents, it appears that the agencies' interpretation of Exemption 5 is overbroad.

Most of the redactions appear to concern discussions regarding, and preliminary drafts of, the Superintendent's Compendium. But it is not clear that the redacted communications can reasonably be said to reveal the agency's or official's "mode of formulating or exercising policy-implicating judgment." *Petroleum Information Corp. v. U.S. Dept. of Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992). Rather, it appears that many of the redacted emails concern basic factual information not implicating the agency's policy judgment and, therefore, are not eligible for this exemption. *Id.* Additionally, the redactions in the preliminary drafts appear to have been performed haphazardly and without any clear rationale. Please see the list below regarding specific redactions.

- Redacted drafts of Superintendent's Compendium
 - The "Table of Contents" header is redacted on Version 1 (page 186) and Version 2 (page 227) yet is visible on the Final (page 42).
 - In a section about Fort Funston, part of the sentence "in signed sensitive restoration areas" is redacted in Version 1 (page 200) and Version 2 (page 241), yet is visible on the Final

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- (page 56). This raises concerns that the redaction was made because the “signed sensitive” area was closed by GGNRA without conducting a public notice and comment period, an issue that was identified in public comments on the Compendium.
- In regards to Voice Control Dog Walking, section 1 under “Trail Corridors (3) in Marin Headlands” is redacted on Version 1 (page 199) and Version 2 (page 241) yet is visible on the Final (page 55). The redactions consist of trail names.
 - In the section about Voice Control Dog Walking Areas, part of the sentence “only in the below listed areas” is redacted on Version 2 (page 309) yet is visible on the Final (page 84).
 - In the section about Voice Control Dog Walking Areas, the word “slightly” is redacted on Version 2 (page 310) yet is visible on the Final (page 85).
 - In the section about Other Dog Walking Provisions, the word “unmanaged” is redacted on Version 2 (page 311) yet is visible on the Final (page 86).
- Email from NPS Regional Director Stan Austin to NPS Deputy Regional Director Randy Lavasseur about Compendium (dated 9/30/19; page 180).
 - An external email about the compendium that was received by Mr. Austin and forwarded to Mr. Lavasseur is redacted (Exemption 5). This redaction is not appropriate because the email was included in the production even though Messrs. Austin and Lavasseur were not identified as document custodians. We also believe that both Messrs. Austin and Lavasseur should be classified as document custodians because this email demonstrates that they may hold emails that are responsive to the FOIA request. (The need to designate them and other custodians is discussed in a separate section of this letter, below.)
 - Email from NPS Regional Director Stan Austin to GGNRA Superintendent Laura Joss about Compendium (dated 9/29/19; page 182).
 - An external email about the Compendium received by Mr. Austin and forwarded to GGNRA Superintendent Laura Joss is redacted (Exemption 5). These are not appropriate redactions because the email was included in the FOIA production even though Mr. Austin and Ms. Joss were not identified as document custodians. We also believe that both Mr. Austin and Ms. Joss should be classified as document custodians because this email is responsive to the FOIA request, and it appears likely that both received many emails regarding the public’s concerns about dog-related aspects of the Compendium. (The need to designate them and others custodians is discussed in a separate section of this letter, below.)
 - Email from GGNRA Law Enforcement Ranger Matthew Wallat to GGNRA Planner Mike Savidge about Compendium draft (dated 7/11/19; page 184).
 - An email from Mr. Wallat (who is identified as an author of the Compendium) to Mr. Savidge regarding comments on a draft of the Compendium is redacted (Exemption 5). An attachment to the email is titled “2019 Compendium Draft Final for 7-10-2019 with MW comments.” Redacting these communications in their entirety is not consistent with the requisite narrow construction of FOIA’s exemptions.
 - Moreover, the existence of this draft and comments appears to contradict Mr. Schifsky’s Declaration (dated 10/26/20) that there were no drafts of the Compendium other than those already released, and that the authors made revisions directly to a (master) draft.

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- Email from Ranger Matthew Wallat to GGNRA Planner Mike Savidge about Compendium/NEPA Compliance (dated 7/19/19; page 223).
 - An email from Mr. Wallat to Mr. Savidge regarding comments on a draft of the Compendium and compliance with NEPA is redacted (Exemption 5). As noted above, redacting these communications in their entirety is not appropriate under FOIA. These communications also appear to contradict Mr. Schifsky's statement that all drafts of the Compendium have already been released.
- Email from GGNRA Planner Mike Savidge with the subject line "File Transfer" (dated 7/16/19; pages 224-225).
 - This email message is redacted, yet it is unclear what files were being transferred or who the recipient was. Accordingly, we cannot determine whether these redactions are appropriate under FOIA.
- Email from NPS staffer Christopher Lauver to GGNRA staffers Mike Savidge and Bill Merkle about dog monitoring program (dated 4/17/17; page 348).
 - An email sent by Mr. Lauver, who works in the NPS Cooperative Ecosystem Studies Unit in Seattle, to Messrs. Savidge and Merkle about the Dog Management Monitoring Program Task Agreement is redacted (Exemption 5). This email indicates that the Dog Management Monitoring Program Task Agreement was being developed despite a memo (dated 1/12/17 and provided to our clients in a separate FOIA request) from the GGNRA acting superintendent directing the suspension of all projects related to the Dog Management Plan. This email is responsive to our FOIA request and there does not appear to be any basis for withholding these communications under FOIA.
- 2019 Compendium Changes Justification memo by Chief Ranger (no date; pages 313-322).
 - This memo contains a section on Oakwood Valley Pond (page 317) with significant redactions. We believe that this information relates to factual claims made by GGNRA – specifically, that the recent discovery of red-legged frogs justified the closure of this area – and is not eligible for an exemption under FOIA.
 - Pages 318 through 321 contain various other redactions that also do not appear to fall within any of FOIA's narrow exemptions.
- 2019 Compendium Changes memo by Chief Ranger (dated 7/16/19; pages. 323-332).
 - This memo contains redactions on page 330 (dog-walking section) that do not appear justifiable under any FOIA exemption.
- Dog Management Monitoring Program Task Agreement 16AC00003 (dated April 17, 2017; pages 350-372).
 - Various pages of this Agreement contain redactions (e.g., pages 351-354). This document indicates that the Dog Management Monitoring Program Task Agreement was being developed despite a memo (dated 1/12/17) from the GGNRA acting superintendent directing the suspension of all projects related to the Dog Management Plan. This document is responsive to the request and there does not appear to be any basis for redacting portions of the document.

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- Blank memo (undated; page 387).
 - This memo is addressed to a “Stephanie” and contains a draft of the 2020 Compendium with exhibits. Yet despite no information regarding the sender or recipient or their roles and titles, the memo nevertheless contains a redacted section. There appears to be no basis for these redactions given the limited information provided.

Document Custodians

The government has identified a total of 19 potential document custodians. Strickfaden Declaration (dated 9/9/20) at pp. 2-3. However, this list omits key personnel who were publicly involved in the Compendium process. We ask that the following 10 NPS employees be added to the list of potential document custodians and that NPS perform a search of their email accounts. A brief explanation for our request is provided after the name of each custodian.

- **Sarah Allen** – Ms. Allen is an NPS employee and the May 28, 2020 document production contains documents and emails which Ms. Allen sent or received. This indicates that Ms. Allen may possess other documents and emails responsive to the request.
- **Stan Austin** – Mr. Austin is the NPS Regional Director and the May 28, 2020 document production contains numerous emails on which Mr. Austin was copied. This indicates that Mr. Austin may possess other documents and emails responsive to the request.
- **Lilette Baltodano** – Ms. Baltodano is an NPS employee and the May 28, 2020 document production contains documents and emails which Ms. Baltodano sent or received. This indicates that Ms. Baltodano may possess other documents and emails responsive to the request.
- **Amy Brees** – Ms. Brees is the GGNRA Community Liaison and spoke at several public meetings regarding the Compendium. Ms. Brees also exchanged numerous emails regarding the Compendium with members of the public, and she is copied on many of the emails included in the May 28, 2020 document production. This indicates that Ms. Brees may possess other documents and emails responsive to the request.
- **Barbara Goodyear** – Ms. Goodyear is an attorney in the Office of the Solicitor for the Department of Interior. Ms. Goodyear was a member of the “Interdisciplinary Team (IDT)” and the May 28, 2020 document production contains documents and emails which Ms. Goodyear sent or received. While we appreciate the attorney-client privilege concerns, we believe the facts indicate that Ms. Goodyear may have other, non-privileged documents or emails responsive to this request. We are happy to discuss potential methods to streamline a search to avoid unnecessary searches and document review involving Ms. Goodyear.
- **Laura Joss** – Ms. Joss is the GGNRA’s Superintendent and the May 28, 2020 document production contains numerous emails which Ms. Joss received. This indicates that Ms. Joss may possess other documents and emails responsive to the request.
- **Chris Lauver** – Mr. Lauver is an NPS employee and the May 28, 2020 document production contains documents and emails which Mr. Lauver sent or received. This indicates that Mr. Lauver may possess other documents and emails responsive to the request.

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- **Randy Lavasseur** – Mr. Lavasseur is an NPS employee and the May 28, 2020 document production contains documents and emails which Mr. Lavasseur sent or received. This indicates that Mr. Lavasseur may possess other documents and emails responsive to the request.
- **Steve Ortega** – Mr. Ortega is an NPS employee and the May 28, 2020 document production contains documents and emails which Mr. Ortega sent or received. This indicates that Mr. Ortega may possess other documents and emails responsive to the request.
- **Gordon White** – Mr. White is the GGNRA's Chief of Cultural Resources. Considering his position, it seems likely that Mr. White may possess other documents and emails responsive to the request.

Search Terms

The GGNRA states that it used 10 discrete terms when searching the email accounts of potential record custodians. Strickfaden Declaration (dated 9/9/20) at pp.3-4. These terms seem inappropriately narrow considering the nature and scope of the request. For example, there is no reason why the terms "commercial dog walking," "managed dog," "unmanaged dog," and "dog licensing" were used as search terms when the term "dog" would have been more likely to capture responsive records and resulted in fewer searches. After all, the Compendium was not limited to those types of activities and dogs.

Furthermore, Mr. Strickfaden's two Declarations appear to contain conflicting information regarding the terms used during these searches. Specifically, Mr. Strickfaden's Declaration dated October 26, 2020 suggests that "additional search terms" (e.g., "Crissy Field," "Ocean Beach," and "Snowy Plover") were used beyond the 10 terms identified in Mr. Strickfaden's Declaration dated September 9, 2020. The Declarations do not explain this discrepancy.

Email Records

The government provided only 9 internal emails (7 of which are redacted) in the May 28, 2020 production. This seems highly unusual considering the size of the agencies, the number of individuals involved in this project (at least 19 potential custodians, not including the 10 additional custodians identified above), the controversial nature of the project, and the duration of the project. Our clients also note that not a single calendar meeting notice, text message, voicemail, or other phone record was provided in the May 28, 2020 production. This, too, seems unusual considering the nature of the project and scope of the request. If the government is unable to locate additional internal e-mails (or calendar meeting notice, text message, voicemail, or other phone record) when it runs the searches requested by this letter, we request the government so inform the Court in a further Declaration.

Exhibit Maps

Our clients have repeatedly requested clarification regarding the discrepancies, inconsistencies and errors between the August 30, 2019 Compendium, the Table of Changes and accompanying Pet Management Exhibit Maps. My clients believe that the GGNRA has not been transparent about the production of the Exhibit maps. In calls with our clients, Mr. Savidge claimed that the map exhibits were produced by law enforcement and that he had virtually no involvement. However, Mr. Strickfaden states that the maps were created in GIS only once "the details were finalized by the Compendium update team." Strickfaden Declaration (dated Oct. 26, 2020) at p.3. With 63 Exhibit maps, it is reasonable to believe that the

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Compendium update team – Messrs. Michael Savidge, David Schifsky, and Matthew Wallat – would have provided some sort of written instructions to the GIS staff or that the GIS staff would have taken notes if the changes were communicated verbally. Accordingly, it is reasonable to believe that documentation regarding these “details” exists and should have been produced as part of this request. Mr. Strickfaden states that the email accounts of the GIS Specialists who prepared the maps, Messrs. Craig Scott and Stephen Skartvedt, were searched, but Mr. Strickfaden does not specify what terms were used to search those accounts. And if the search terms identified in Mr. Strickfaden’s September 9, 2020 Declaration were used, it is likely that those terms were too narrow to constitute a reasonable search for these records.

In addition, Mr. Strickfaden’s October 26, 2020 Declaration refers to 2017 Compendium maps that were apparently used as a baseline for the 2019 Compendium’s Pet Management Exhibit maps. Mr. Strickfaden has explained that errors in the draft 2019 Compendium’s Pet Management Exhibit maps were due to errors in the 2017 Compendium maps. In his October 26, 2020 Declaration, Mr. Strickfaden states: “The unsigned 2019 draft Compendium did not contemplate changes to dog walking opportunities on the Milagra Overlook Trail. The 2017 Compendium contained maps that were incorrect, and the proposed changes made technical corrections so that the maps accurately reflected the text. The Milagra trail segments map now correctly illustrate that they are also on-leash, dog walking opportunities.”

Given this statement, the 2017 Compendium maps that were used as the baseline for the draft 2019 Compendium Pet Management Exhibits are responsive documents that should have been produced. In addition, Mr. Strickfaden’s statement that the proposed changes were “technical corrections” is not consistent with explanations by Mr. Savidge (September 23, 2019 phone call with Ms. Christine Corwin) and Ms. Alison Forrestel, GGNRA Chief of Natural Resource Management and Science (October 18, 2019 meeting with clients and Congresswoman Jackie Speier).

We also note that a member of one of our clients, Ms. Christine Corwin, exchanged several emails with Mr. Strickfaden and Ms. Brees regarding the development of the maps. These communications are responsive to the request yet were not included in the May 28, 2020 production. This omission strongly suggests that the searches performed thus far have been much too narrow.

In the event that the government is unable or unwilling to provide records regarding the development of the exhibit maps, we would request Declarations from the following individuals regarding their roles in developing the maps.

- **GGNRA Director of Strategic Planning and Partnerships Michael Savidge** describing his involvement with the 2019/2020 Superintendent’s Compendium, the process by which the Exhibit maps were created, and describing his communications (verbal, written, email) with other staff in developing the Compendium.
- **GGNRA Chief Ranger David Schifsky** describing his involvement with the 2019/2020 Superintendent’s Compendium, the process by which the Exhibit maps were created, and describing his communications (verbal, written, email) with other staff in developing the Compendium.
- **Law Enforcement Specialist Matthew Wallat** describing his involvement with the 2019/2020 Superintendent’s Compendium, the process by which the Exhibit maps were created, and

describing his communications (verbal, written, email) with other staff in developing the Compendium.

- **GIS Specialists Craig Scott and Stephen Skartvedt** listing the individuals they worked with to create the Exhibit maps, and describing their communications (verbal, written, email) with each individual listed in order to create and finalize the Pet Management Exhibit maps.

Dog Behaviorist Consultant

The May 28, 2020 document production contains a series of emails between Mr. Savidge and dog behaviorist Alexandra Horowitz of Barnard College. Ms. Horowitz appears to have been engaged by NPS between September 2016 and September 2018 to serve as an “expert consultant” on dog behavior and perform tasks such as literature review, conducting surveys, operationalizing park rules, and preparing other deliverable products. Considering the scope of the work provided, it is reasonable to believe that Ms. Horowitz prepared a variety of documents that are responsive to this request and should have been produced in the May 28, 2020 production. Accordingly, we ask that the agencies include Ms. Horowitz’s name (“Horowitz”) and email address as additional search terms, and produce any contracts or agreements under which this work was performed. Some additional observations regarding Ms. Horowitz’s work for NPS are described below.

- NPS appears to have paid Ms. Horowitz for various work product: “Finally, with your review of our indicators, I was wondering if we could add your assistance (**3rd product for additional 1K**) in the development of reliable indicators and protocols thru the operationalizing of 2 park rules as noted here below.” July 31, 2018 email from Mike Savidge to Alexandra Horowitz (May 28, 2020 production).
- Much of the Ms. Horowitz’s work appears to serve as the foundation for key parts of the Compendium, such as changes to dog definitions (e.g., “unmanaged dog”), yet there are no records that show Mr. Savidge shared this information with NPS colleagues. The absence of any such records appears to contradict Mr. Savidge’s statement that this information would be shared and discussed internally: “...we will certainly be discussing these internally and looking at how we can best incorporate them thru our process. We will probably have some follow-up questions when we do re-engage on these issues later this year; and, we hope to be able to come back to you with any questions that may arise from your thoughtful recommendations.” September 25, 2018 email from Mike Savidge to Alexandra Horowitz (May 28, 2020 production).
- Our clients also note that the May 28, 2020 production does not contain a single internal record related to the work performed by Ms. Horowitz. This, too, seems unusual considering the nature of the project and scope of the request.

Search of Physical Records

Mr. Strickfaden states that the physical files and documents of several employees were searched for responsive records. Strickfaden Declaration (dated 10/26/20) at ¶ 10. However, there is no explanation for why other potential custodians did not perform similar searches. For example, no search was performed of Mr. Matt Wallat’s files even though he was one of the three NPS staff primarily responsible for drafting

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the 2019 Compendium. We request that the agencies perform a search of the physical records of Mr. Wallat and the other potential custodians to ensure responsive records are located and produced.

Thank you in advance for working with us to resolve our clients' concerns. We are happy to arrange a call to discuss any questions or concerns.

Sincerely,



Chris Carr
of PAUL HASTINGS LLP