

PREDECISIONAL DRAFT

Federal Panel Recommendation to the General Superintendent on Proposed Rulemaking for Pet Management at Golden Gate National Recreation Area

Revised November 7, 2002

Executive Summary

In January 2002, the National Park Service published an Advanced Notice of Proposed Rulemaking (ANPR) in the *Federal Register* seeking public response to options presented, questions, and ideas for a rule to manage off-leash pet use in Golden Gate National Recreation Area (GGNRA). Subsequently, a panel of senior federal officials from outside GGNRA was convened to review the public comment and other technical information. The purpose of the panel was to recommend to the Superintendent of GGNRA whether the park should proceed to rulemaking or whether the present regulation - requiring pets to be on leash in all GGNRA areas where they are allowed - should remain in effect. The panel concluded that off-leash dog walking in GGNRA may be appropriate in selected locations where park resources will not be impaired if the standards for appropriate use (as defined in NPS policies and regulations) can be met and if public safety incidents and public use conflicts can be appropriately managed. The panel further recommended that the park pursue both rulemaking and comprehensive planning for pet management to address suitable locations and proper management strategies. Options for conducting an integrated rulemaking and planning process were prepared, as well as suggested criteria for formulating a proposed rule and implementation strategy.

Section 1: Introduction

1.1 Changing Context

Established in 1972, Golden Gate National Recreation Area (GGNRA) has grown to encompass 75,500 acres, spanning three counties in the San Francisco Bay Area with 28 miles of coastline. In 1979, the GGNRA Citizen's Advisory Commission developed and recommended a pet policy to GGNRA that established guidance for locations and criteria for "voice control" of pets within certain areas of the park. The Commission's "voice control" policy did not and could not override the existing NPS regulation prohibiting pets off-leash. Nevertheless, the park, in error, implemented the "voice control" policy, in contradiction to Service-wide regulation. For more than 20 years, this unofficial "voice control" policy was in place within GGNRA.

However, since GGNRA was established in 1972, park visitation and the Bay Area population have both increased. There has been increasing use of park areas for off-leash dogs, and, as a result, there has also been increased conflict and potential for conflict between other user groups and dogs and their owners.

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1.2 Current Climate

On January 23, 2001, the GGNRA Citizen's Advisory Commission acknowledged publicly the 1979 "voice control" policy was null and void since it was contrary to NPS regulation. Hundreds of people in favor of off-leash dog use attended this meeting and the park has received significant comment in support of off-leash dog walking in the park.

At the same time, the park has received complaints by park visitors, including minorities, seniors and families with small children, alleging that off-leash dogs have precluded them from visiting the park for fear of being knocked over, attacked by dogs, or verbally abused by dog owners.

Several recent events have, together, underscored the need for a review of pet management in GGNRA. These include the increased visitation to GGNRA, litigation concerning the Fort Funston area of the park, the public concern about visitor and pet safety, park resource management issues involving wildlife and vegetation protection, and a review of dog-walking issues by the Golden Gate National Recreation Area Advisory Commission.

1.3 Status of Pet Management in Golden Gate National Recreation Area

The National Park Service published an Advanced Notice of Proposed Rulemaking (ANPR), a preliminary step in the rulemaking process, in the Federal Register in January 2002, seeking public response to pet management options presented, questions, and ideas for a rule. During a 91-day public comment period, January 11 through April 12, 2002, the park received public comment addressing these options, answering the questions and presenting options of their own.

The NPS held two public informational meetings on the ANPR in March 2002, cosponsored by the League of Women Voters, where a panel of speakers presented many factors to aid public comment on the ANPR. The NPS also held an oral comment opportunity in April 2002, to allow the public to comment publicly on the ANPR.

The Director of the NPS will make the final decision on whether to proceed to rulemaking. That decision will not be based on the number of comments received, but rather on substantive suggestions and comments that direct the NPS toward a decision on pet management. Additionally, existing laws, regulations and policies, as well as the environmental impacts associated with pet management will be considered in the final decision.

Section 2: Federal Panel Review

2.1 Establishing a Federal Panel

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A panel of senior federal officials from outside GGNRA was convened in mid-August to review the Advanced Notice of Proposed Rulemaking Public Comment Analysis and other technical information. The purpose of the panel was to recommend to the Superintendent of GGNRA whether the park should proceed to rulemaking or whether the present regulation - requiring pets to be on leash in all GGNRA areas where they are allowed - should remain in effect. Ultimately, the Superintendent's recommendation will be forwarded from GGNRA through the Pacific West Regional Director to the Director of the NPS for a final decision.

2.2 Federal Panel Review Procedure

The panel adopted procedures for evaluating information and preparing a recommendation on pet management in GGNRA. These procedures included (1) reviewing applicable statutes and authorities, federal regulations, management policies, and case law; (2) reviewing public comment and opinion on pet management in GGNRA; (3) reviewing social, physical and biological constraints and opportunities for off-leash dog walking; (4) reviewing applicable planning guidelines and rulemaking guidelines; and (5) preparing findings and recommendations.

2.3 Review of Authorities and Policies

The applicable statutes and authorities that the panel considered included the following:

- Golden Gate National Recreation Area enabling legislation (Public Law 92-589)
- The National Park Service Organic Act
- Administrative Procedures Act
- Endangered Species Act
- National Environmental Policy Act
- National Historic Preservation Act
- Relevant Case Law
- Applicable Federal Regulations

These authorities provide the legal sideboards within which recommendations on pet management in GGNRA must be formed. In addition, the panel reviewed applicable management policies contained in *National Park Service Management Policies 2001* and management guidelines contained in existing park management plans, such as the 1980 GGNRA General Management Plan, resource management plans, and site specific area development concept plans, such as the 1996 Crissy Field EA.

2.4 Review of Public Comment and Opinion

The panel also reviewed and considered two reports prepared by Northern Arizona University that analyze public comment and opinion concerning pet management in GGNRA. The first report, entitled *Golden Gate National Recreation Area: ANPR Public Comment Analysis*, contains an analysis of the 8,580 public comments received in response to the Advanced Notice of Proposed Rulemaking. The second report, entitled

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Golden Gate National Recreation Area: ANPR Public Opinion Research Telephone Survey 2002, contains the results of an extensive telephone survey of public opinion in the four county greater San Francisco Bay Area. Both documents were instructive in understanding public sentiment surrounding pet management issues in GGNRA and region.

2.5 Consideration of Legal Requirements or Mandates that Otherwise Prohibit Public Uses of National Parks

As part of its review procedure, the panel also considered the implications of existing pet management regulations found in 36 C.F.R. Sec. 2.15, which prohibits off-leash dog walking in all units of the national park system. In addition, the GGNRA enabling legislation (Public Law 92-589) contains no provisions that over-ride this national prohibition and does not directly or specifically provide for off-leash dog walking in the park. In consideration of the regulatory prohibition and the park's enabling legislation, the panel evaluated a range of local factors that might compel a case for "appropriateness" of off-leash dog walking in GGNRA.

2.6 Consideration of Appropriateness of Off-leash Dog Walking in GGNRA

The panel reviewed management policies that define appropriate public uses of national parks. Section 8.1 of the *National Park Service Management Policies 2001* state:

...the service will allow only uses that are (1) appropriate to the purposes for which the park was established, and (2) can be sustained without causing unacceptable impacts to park resources or values.

Section 8.2 continues to define appropriate public uses as follows:

The service will therefore:

- Provide opportunities for forms of enjoyment that are uniquely suited and appropriate to the superlative natural and cultural resources found in the parks.
- Defer to local, state, and other federal agencies; private industry; and non-governmental organizations to meet the broader spectrum of recreational needs and demands.

Section 8.2 also defines what appropriate public use would encompass as follows:

To provide for enjoyment of the parks, the National Park Service will encourage visitor activities that:

- Are appropriate to the purpose for which the park was established; and
- Are inspirational, educational, or healthful, and otherwise appropriate to the park environment; and
- Will foster an understanding of, and appreciation for, park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to the park resources; and

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- Can be sustained without causing unacceptable impacts to park resources or values.

Finally, Section 8.2 defines public uses that are not appropriate in national parks as follows:

Unless mandated by statute, the Service will not allow visitors to conduct activities that:

- Would impair park resources or values;
- Create an unsafe or unhealthful environment for other visitors and employees;
- Are contrary to the purposes for which the park was established; or
- Unreasonably interfere with:
 - the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park;
 - NPS interpretive, visitor service, administrative; or other activities;
 - NPS concessionaire or contractor operations or services; or
 - Other existing, appropriate park uses.

In the discussion of appropriate public uses of national parks, the management policies refer frequently to uses that are “appropriate to the purposes for which the park was established.” To explore this question further, the panel reviewed Section 1 of the park’s enabling legislation (Public Law 92-589), which states:

Section 1. In order to preserve for public use and enjoyment certain areas of Marin and San Francisco Counties, California, possessing outstanding natural historic, scenic, and recreational values, and in order to provide for the maintenance of needed recreational open space necessary to urban environment and planning, the Golden Gate National Recreation Area (hereinafter referred to as the “recreation area”) is hereby established. In the management of the recreation area, the Secretary of the Interior (hereinafter referred to as the “Secretary”) shall utilize the resources in a manner which will provide for recreation and educational opportunities consistent with sound principles of land use planning and management. In carrying out the provisions of this Act, the Secretary shall preserve the recreation area, as far as possible, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area.

The panel concluded that collectively, these policies and authorities provide an important framework for considering the “appropriateness” of off-leash dog walking in GGNRA.

2.7 Consideration of Natural and Cultural Resources

The panel received an overview of affected natural and cultural resources. GGNRA contains a rich mosaic of natural and cultural resources, including 75 rare or special status wildlife species, 36 rare or special status plant species, and numerous cultural landscapes and archeological sites. GGNRA is one of North America’s biodiversity hotspots and preserves habitat types that are increasingly rare and threatened by

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sprawling regional development. The protection of resources is a principle mandate of the NPS mission. A central question in considering appropriateness of off-leash pet use is whether the use could be sustained without causing unacceptable impacts to these resources.

2.8 Consideration of Public Safety and Conflict with Existing Public Uses

The panel also considered the critical question of public safety relative to off-leash dog walking in GGNRA. These public safety concerns involve aggressive behavior towards other dogs and people, including dog bites, dogs falling off cliffs, people going after their dogs that have fallen off cliffs, and visitors being jumped on or knocked down by dogs. GGNRA's tracking of dog-related incidents during a four-year period (1998-2001) reveals a total of 67 reported dog bites. Rangers believe this number represents just a fraction of the total incidents that occur and are unreported. In addition, rangers performed 58 technical rescues of dogs falling off cliffs between 1998-2000, which resulted in three ranger injuries. Responding to these public safety incidents requires a large commitment of park personnel and equipment, jeopardizes safety of park staff and leaves major areas of GGNRA unprotected.

The panel also considered potential conflicts between off-leash dog walking and other park uses. GGNRA staff reported receiving calls and written correspondence from families with children and seniors stating that they no longer use the park due to dog encounters. Other use conflicts include wildlife viewing, bird watching, picnicking, and enjoyment of natural sights and sounds.

Section 3: Federal Panel Findings

After reviewing and considering the applicable authorities, policies, planning guidelines, and information on park setting, natural and cultural resources, and public safety, the panel developed several critical observations relevant to pet management in GGNRA. The context of the unique urban environment within which GGNRA fits, and the benefits of having flexible management tools to support recreational needs provides the framework for these observations.

- 1. GGNRA parkland is immediately adjacent to San Francisco, one of the most densely populated urban centers in the United States of America, and manages a significant portion of recreational open space in the city.* Most residents do not have "backyards" or access to private open space to exercise their pets off-leash. Residents rely on the close proximity of GGNRA open space for this purpose.
- 2. GGNRA manages the majority of recreational waterfront in San Francisco and Marin Counties.* These waterfront recreation sites, which include most of the available ocean beaches, are popular areas for off-leash dog walking. There are few non-GGNRA managed alternatives for beach access.

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3. *There is a significant expression of demand from the visiting public for off-leash dog use at locations within GGNRA.* The demand was clearly evident in the public response to the Advanced Notice of Proposed Rulemaking and is also evident in the number of park visitors who have walked their pets off leash in GGNRA since its establishment in 1972. Additionally, the telephone survey response found that although there was not overwhelming support for off leash dog walking, 40% of the public surveyed supported off leash use.

4. *There is longstanding off-leash dog use with tacit acceptance by NPS at certain sites within GGNRA.* Given the longstanding tacit acceptance, the public has come to expect and rely on a continuation of use in GGNRA.

5. *Locations exist within GGNRA that appear to be suitable for off-leash dog use without causing unacceptable impacts.* These areas include designed landscapes with minimal natural habitat value, such as large grassy areas, ornamentally landscaped parkways, roadways, and other designed landscapes.

6. *Public safety and user conflict issues involving off-leash dog walking in GGNRA may be adequately mitigated through appropriate measures.* Possible mitigation strategies might include fencing selected areas to separate off-leash dog use from other park uses, sensitive resources and the public. Areas that are inherently unsafe for off-leash dog use could be closed to that use, including shoreline cliffs or rocky beach areas. Additionally, the GGNRA staff could establish community partnerships to teach and encourage safe and appropriate dog walking behavior.

The National Park Service mission places a high value on preserving nationally significant natural and cultural resources for enjoyment by present and future generations. In fulfilling this mandate, management policies and case law dictate that public use and enjoyment must be subordinate to the protection and preservation of natural and cultural resources if they are to be sustained into the future. The panel weighed this mandate in considering whether a rule to permit off-leash dog walking in GGNRA was an appropriate public use. In light of the observations noted above, and in consideration of the mission mandate, the panel concludes that off-leash dog walking in GGNRA may be appropriate only in selected locations and with proper management. Suggestions for determining these locations and defining proper management strategies are discussed in the next section.

Section 4: Federal Panel Recommendations

The panel concludes that off-leash dog walking in GGNRA may be appropriate in selected locations where resource impacts can be adequately mitigated and public safety incidents and public use conflicts can be appropriately managed. The panel further recommends that the park pursue both rulemaking and comprehensive planning for pet management to address suitable locations and proper management strategies. Options for developing an integrated rulemaking and planning process are discussed in section 4.2.

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4.1 Determining Suitable Locations for Off-leash Dog Walking

The following figure sets forth suggested criteria to determine suitable locations for off-leash dog walking. This matrix is intended only as a guide. A pet management plan may include additional evaluation factors. In general, suitable locations for off-leash dog walking in GGNRA include manipulated landscapes that exhibit low resource values, limited potential for conflict with existing uses, and can safely accommodate off-leash dog use.

Location Name: <i>(To be completed by GGNRA staff.)</i>			
Location Evaluation Factors- rate from 1 (less potential for impact) to 5 (most potential for impact)	1	3	5
Is the site a manipulated landscape, such as a lawn or roadway, etc?			
Is the site an area with low operational requirements?			
Is the site characterized by native habitat?			
Does the site have potential for native habitat restoration?			
Does the site contain listed species or species of concern?			
Does the site contain potential habitat for listed species or species of concern?			
What is the potential for disturbance or displacement of wildlife?			
Is there potential for conflict with recreational or other uses, such as interpretation or educational activities, playgrounds or picnic areas?			
Is the site an area of high-density visitor use with a potential for conflict?			
Does the site contain potentially unsafe conditions such as bluffs, rocky areas, or cliffs?			
Does the site contain vulnerable cultural resources?			
Is the site susceptible to increased erosion due to increased use?			
Are there fresh water or estuarine resources that are vulnerable to impact?			
Total Score			

Figure 1: Suggested Evaluation Matrix for Considering Suitable Off-leash Dog Walking Locations

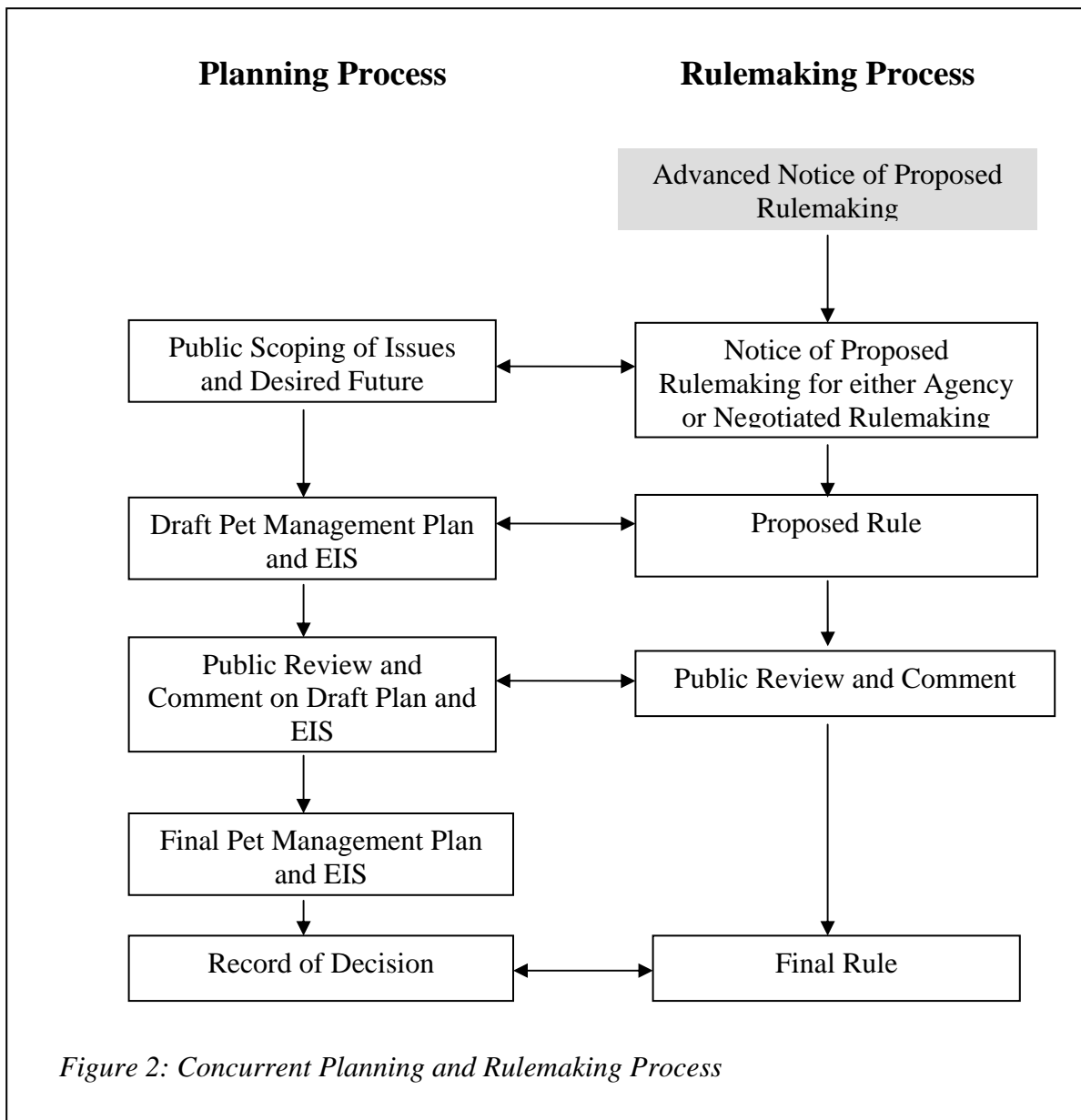
4.2 Defining a Rulemaking and Pet Management Planning Process

The panel has developed two alternative approaches for integrating a rulemaking process and the development of a comprehensive pet management plan. One alternative involves conducting a planning process for preparing a pet management plan while concurrently conducting an agency or negotiated rulemaking process (see figure 2). This alternative yields considerable time and resource savings by integrating public comment periods and planning resources. The second alternative involves conducting a planning process for preparing a pet management plan first, followed by an agency or negotiated rulemaking process (see figure 3). This alternative allows for a full exploration of alternatives and environmental consequences prior to proposing a rule.

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These alternatives are provided as suggestions only. Regardless of the ultimate process that is used, there are certain features that should be incorporated, including:

1. GGNRA should adopt the planning and rulemaking-process which incorporates the elements listed in Section 4.3.
2. GGNRA should develop a comprehensive planning for pet management and a rulemaking process so that resource considerations, operational costs, and public use and safety considerations are evaluated and assessed holistically.
3. A third party or neutral body may be identified to collaborate in the planning and rulemaking processes.
4. The planning and rulemaking process must incorporate environmental review as required by NEPA and NHPA, and comply with all other applicable laws.



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Planning Process

Rulemaking

Advanced Notice of
Proposed Rulemaking

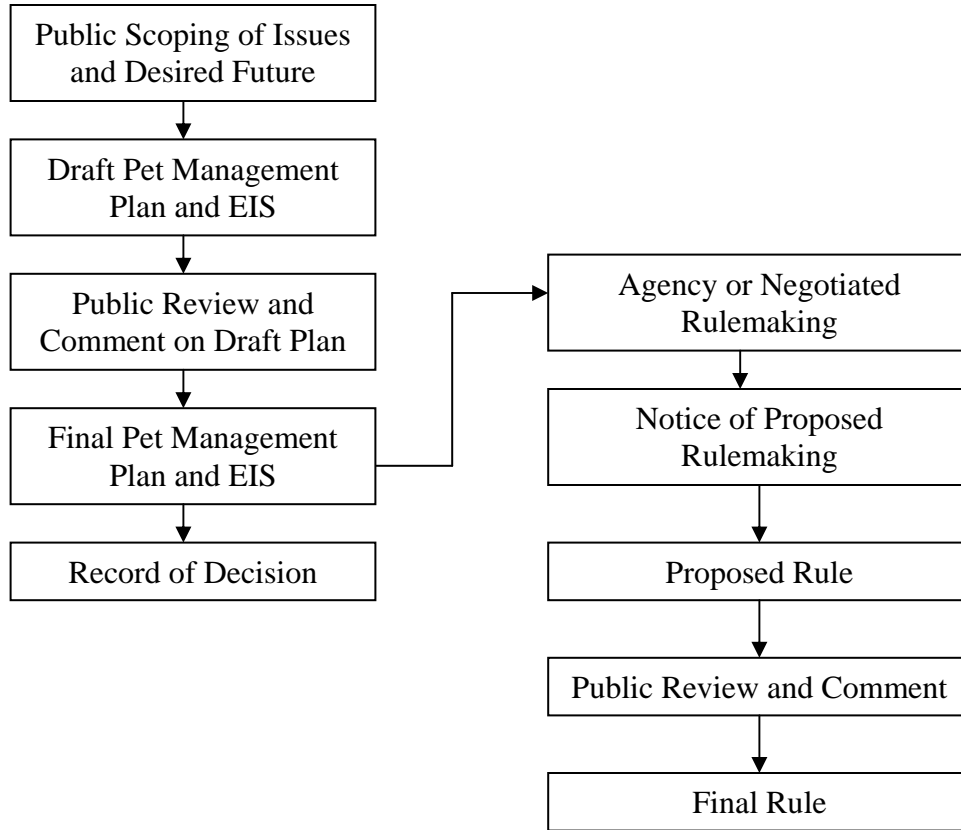


Figure 3: Planning Process followed by Rulemaking

4.3 Elements that Should be Incorporated into a Rule and Implementation Program for Off-Leash Dog Walking in GGNRA

Based on its review of the legal and policy framework, and in consideration of the environmental and operational constraints that exist, the panel recommends that the following guidelines be considered in developing a final rule and in the implementation of a pet management program in GGNRA. Again, these are suggested guidelines. Implementation would also depend on fiscal and operational feasibility of any operational alternative selected. Implementation would also depend on the involvement of users to support the program.

1. Design a rule that allows for adaptive management, which allows the park flexibility and discretion to adjust to changing environmental and public-use conditions. The

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superintendent's compendium could be an effective tool for assessing future conditions and managing adaptively to a changing environment. The rule might address parameters or circumstances that would initiate a change to the compendium and requirements for public notification.

2. Develop a program to monitor and track impacts associated with off-leash dog use against benchmark indicators.
3. Clearly distinguish between on-leash, off-leash, and no pet areas to avoid management and public confusion.
4. Consider seasonal, weekly, and daily timeframes for off-leash use to mitigate conflict with resource values or other public uses.
5. Consider collaborative partnerships for educating visitors regarding appropriate off-leash use.
6. Consider how off-leash dog use incidents should be reported and managed.
7. Consider requiring permits for off-leash dog use as a method for educating users and monitoring activity.
8. Consider establishing licensing requirements or other identification for pets.
9. Consider requiring commercial dog walkers to obtain and display individual business permits and consider limiting the number of pets per walker to protect public safety and resources.
10. Consider how pet waste will be managed to protect resources and provide a high-quality visitor experience.
11. Consider establishing enforceable thresholds for noise management.
12. Consider establishing guidelines for impounding pets.
13. Consider establishing guidelines for cost-recovery for dog rescues.
14. Consider developing guidelines for achieving unified law enforcement of pet management rules between park police and park rangers.