

# Compendium of Boulder City Council Member Hotline Questions

March 28, 2014

## Questions from council member Macon Cowles:

### Fundamental Questions

*What is the impetus for investigating and then proposing changes to the Green Tag program? Is it primarily because in the Visitor Master Plan, we committed to doing an analysis of the success of the program at some time in the future? Or is it to address certain conflicts that have arisen on Open Space?*

### **Staff Response:**

The Voice and Sight Tag (Tag) Program was described in the 2005 Visitor Master Plan (VMP as experimental. The program was implemented adaptively (per the guiding principles of the VMP) with the objectives of improving awareness of the requirements of voice and sight control and improving compliance with voice and sight control regulations. A monitoring component was included with the implementation of the program to provide information about whether the program was successfully achieving its objectives.

Staff evaluated changes for several reasons:

- Dog and off-leash related conflicts remain one of the top sources of conflict reported by visitors to Open Space and Mountain Parks (OSMP),
- Monitoring concluded that several compliance factors revealed results lower than standards set in the VMP and that these measures did not show decreases in conflicts over time,
- City Council identified the Tag Program among a number of overarching issues for OSMP staff review in response to concerns about the long-term sustainability of visitor services and environmental resources, and
- The Open Space Board of Trustees (OSBT) has recommended that staff examine potential enhancements to the Tag Program.

### Question

*Furthermore, what statistics do we have that would document Code or Rule infractions on Open Space—infractions by all users?*

### **Staff Response:**

OSMP tracks the number of citations issued by rangers. The following table summarizes the number of citations issued by rangers during 2013 for activities on OSMP.

<b>Infraction</b>	<b>Number</b>
No voice and sight control tag for off-leash dog	123
Dog off-leash in leash required area	86
Dog out of voice and sight control	73
Dogs prohibited	26
Dog at large-general	12

Camping	57
Tent Structure	41
Aggressive animal	7
Failure to remove animal excrement	7
Mountain biking prohibited	4
Failure to protect wildlife	2
Hot air balloons prohibited	2
Permit required for commercial use	3
Use of horse (livery ) without a permit	1
Discharging firearm	1

**Question Regarding Cost**

*What is the annual cost of the current Green Tag program, and how does that compare to the additional proposed cost of the revised Green Tag program?*

**Staff Response:**

Implementing the existing Tag Program occurred over a two-year timeframe from 2005-06. After program implementation, annual program operating expenses remained fairly steady. The process to make the proposed revisions to the Tag Program will follow a similar approach with implementation occurring over a two-year period (2014-2015) then transitioning to more consistent operating expenses after implementation. The table below summarizes and compares the program implementation and ongoing annual operation expenses of the existing program with the proposed revised program. For the purposes of the cost estimate, one full time equivalent (FTE) is equal to 2,080 hrs of staff time.

	<b>Equipment, Materials and Services</b>	<b>Seasonal Staff (FTEs)</b>	<b>Standard Staff (FTEs)</b>
<b>Implementation Costs</b>			
<b>Existing Program — Implementation (2005-2006)</b>	<b>\$67,800</b>	<b>1.3 FTEs</b>	<b>2.6 FTEs</b>
<b>Proposed Revised Program — Implementation (2014-2015)</b>	<b>\$201,630</b>	<b>4.5 FTEs</b>	<b>3.9 FTEs</b>
<b>Annual Operating costs</b>			
<b>Existing Program —Annual Costs Post Implementation</b>	<b>\$3,450</b>	<b>-</b>	<b>.5 FTE</b>
<b>Proposed Revised Program — Annual Costs Post Implementation</b>	<b>\$25,190</b>	<b>1 FTE</b>	<b>.8 FTE</b>

The OSBT and City Council both supported a cost recovery model for the Tag Program. The three-tiered fee structure based upon residency is structured to achieve cost recovery. Increased registration fees coupled with a requirement for periodic renewal were modeled to generate program revenues adequate to cover program costs. The program cost estimates are based on information prepared for the revised program based upon a 2014 start date. Estimates may need to be adjusted to account for council-directed revisions and the later (2015) start date.

Substantial staff time is required to plan, coordinate and implement the recommended Tag Program changes. During 2014, staff will develop systems to administer the revised program and integrate information from the Tag Program with dog license information as well as to design and schedule presentations of the education session. Under the proposed recommendations, changes will become effective in 2015. After full implementation in 2015, staff predicts annual costs and staffing needs will be substantially reduced and remain relatively constant.

Staff estimates that over the two-year time frame approximately 8.4 FTEs or \$532,000 of standard and seasonal OSMP staff time will be necessary to plan, coordinate and implement the proposed program enhancements. This estimate includes approximately 4.4 FTEs (\$295,000) to prepare program changes in 2014 and 4.0 FTEs (\$237,000) for first year administration of the revised program. Implementation will be a high priority for the department, and existing staff will be assigned to assist with the Tag Program. Of the 8.4 FTEs needed during 2014 and 2015, approximately half can be allocated from existing staff, mostly standard positions. An additional 2 FTEs (\$87,000) of seasonal positions will be needed in 2014 and 2.5 FTEs (\$109,000) will be needed in 2015.

Non-personnel program costs are estimated at \$201,630 for the first two years and \$25,190 annually thereafter. These expenses include revisions to the online registration and record management system and links to the city's dog license program, space and supplies for the education sessions, new information and regulation signs, and other materials and supplies.

**Question about Two Strikes**

*I am confused by part of the Amendment to 6-13-5, B.R.C., the text of which amendment can be found at the bottom of packet page 133. Subsection (b) provides for the loss of Green Tag privilege on the second conviction within two years of three numbered offenses. The third numbered offense which could lead to suspension of Green Tag privileges would be a dog running at large "on open space land or on other city properties where Voice and Sight Control privileges are authorized by that section."*

**Question:**

*Isn't it true that Voice and Sight Control privileges only exist on certain Open Space land, and that Voice and Sight Control privileges do not apply to City land that is not part owned or managed by Open Space?*

**Staff Response:**

There are three city-owned lands that allow voice and sight control which are not part of the Open Space and Mountain Parks system. These lands include areas by the Boulder Reservoir, Coot Lake and the dog park at Howard Hueston Park.

**Question:**

*Is it correct to say, then, that having an unleashed dog in a City Park where leashes are required does NOT count as a violation?*

**Staff Response:**

Currently, this violation does count as a strike towards the suspension of privileges. Please see B.R.C. 6-13-5(a). Under the proposed ordinance, it will not count as a strike.

**Question:**

*We have heard from so many dog guardians that they fear chasing a squirrel up a tree would cause them to lose privileges for their pet, can staff draft an exception for chasing a squirrel up a tree?*

**Staff Response:**

Staff would like to draw attention to two points regarding concerns expressed about a dog “chasing a squirrel up a tree” and the loss of voice and sight privileges. First is a clarification of wildlife protection laws, enforcement and links to suspension of privileges. Second is a clarification of the ecological significance of wildlife protection laws.

1) Wildlife Protection Laws — The importance of protecting wildlife from dogs harassing (which includes chasing) wildlife is codified in state law, which the Boulder Revised Code parallels as shown in the table below. The state statute defines “harass”. Although city code does not include this definition, rangers base their enforcement on behavior consistent with the state definition. As well, the state definition would be presented as persuasive authority to a judge or jury if a charge were to go to trial.

Colorado Revised Statutes (C.R.S.)	Boulder Revised Code (B.R.C)
<p data-bbox="212 1108 773 1178"><b>33-6-128.</b> Damage or destruction of dens or nests - harassment of wildlife</p> <p data-bbox="188 1186 789 1545">(2) Unless otherwise allowed by commission rule or regulation, it is unlawful for any person to knowingly or negligently allow or direct a dog which he owns or which is under his control to harass wildlife, whether or not the wildlife is actually injured by such dog. Any person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars.</p> <p data-bbox="188 1587 784 1728">(24) "Harass" means to unlawfully endanger, worry, impede, annoy, pursue, disturb, molest, rally, concentrate, harry, chase, drive, herd, or torment wildlife.</p>	<p data-bbox="956 1108 1297 1142"><b>8-3-5.</b> Wildlife Protection.</p> <p data-bbox="824 1186 1422 1581">No owner or keeper of a dog shall negligently allow or direct such dog to harass wildlife or livestock, whether or not the wildlife is actually injured by such dog, within any park, recreation area, or open space, or other property of the city, including, without limitation, any street or other right of way controlled or maintained by the city. This prohibition does not apply to any lessee of such property using a working dog to control livestock on the leasehold.</p>

In the proposed changes to the Tag Program, convictions of B.R.C. 8-3-5 violations after court proceedings would cause suspension of voice and sight privileges. It is important to note that charges for this violation must be for incidents where the guardian negligently allowed or directed a dog to harass wildlife or livestock. The standard for “negligence” is whether the dog guardian failed to exercise the degree of care that would be exercised by the ordinarily reasonable and prudent inhabitant of the city under the same or similar circumstances. Please see, BRC 1-2-1(b). Rangers issue citations for these incidents when they determine there is negligence in dog control. Moreover, guardians charged with this violation have the right to demand a trial, where the city would be required to prove this alleged negligence beyond a reasonable doubt.

Voice and sight control per the city’s code requires that a guardian must prevent their dog from engaging in the behavior of “Chasing, harassing or disturbing wildlife or livestock.” The proposed changes to the Tag Program recommend including convictions of the voice and sight control (6-1-16) offense among those offenses where two convictions in two years would cause suspension of privileges. Rangers may issue a Voice and Sight (6-1-16) violation in addition to charges for Failing to Protect Wildlife (8-3-5) or instead of charges for 8-3-5 where incidents do not meet the negligence standard required in 8-3-5 but where the guardian was unable to use voice and sight control to prevent disturbance to wildlife.

## 2) Significance of Dogs Chasing Wildlife —

Unlike humans and their pets, wildlife does not have the luxury of leisure time, and all activities can be crucial to their survival. Harassment or chasing disrupts required maintenance activities such as feeding, resting, tending to young, courtship or predator avoidance. It causes changes in physiology and behavior, and takes time away from these necessary activities. Dogs, which are seen as predators to wildlife, force wildlife movement. This movement causes avoidable energy expenditure and may take them outside their home territory, take them away from nests or young, advertise their location or the location of their young to a natural predator, or take them into an area where they may face a threat from other individuals of their species. This unnecessary energy expenditure may directly conflict with overwinter survival strategies, their ability to provide for their young or respond to other stressors in the environment including weather, predators or disease.

Dogs can be directly or indirectly responsible for wildlife mortality. Indirect effects may be unseen by the dogs’ human companion, but are nonetheless significant for wildlife. Cumulative stressors (i.e., deep snow, flooding, extreme weather, food shortages, low temperatures, disease) act to depress body condition. Harassment by dogs may be the (avoidable) difference between life and death for some animals, especially in already-stressed individuals.

Because wildlife potentially face so many cumulative challenges to their survival or ability to successfully reproduce, it is important for guardians to prevent the avoidable and additional stress of wildlife being chased or harassed by dogs. Avoiding this unnecessary stress will help give the wildlife the best chance to respond to natural challenges and survive while successfully raising offspring that will contribute to the next generation- leading to healthy wildlife populations on OSMP.

**Question about the proposed One Year Term of the Green Tag license**

*What is the reason for the proposed one-year renewal term of green tags? How will that contribute to the success of the program? See p. 128.*

**Staff Response:**

Requiring a one-year renewal for voice and sight control tags is to ensure that participants are meeting the requirement that their dogs are appropriately vaccinated against rabies while providing a consistency with dog licensing requirements. City of Boulder dog licenses must be renewed annually to ensure rabies vaccinations are current. An annual renewal also supports the need to have accurate information about program participation and participants which helps in having current contact information and reporting accurate statistics on participation numbers.

**Question of meaning**

*I do not understand the meaning of the italicized phrase in the sentence below, found at packet page 128, in a table with the row heading, “6-13-4 Voice and Sight Control Evidence Tag Requirements”:*

Requires attendance at an informational session for all guardians prior to applying for participation in the Tag Program *and within the past five years for renewing participation.*

**Staff Response:**

The statement “*and within the past five years for renewing participation*” refers to the proposed requirement that guardians attend the education session at least every five years.

**Question of Fairness**

*Some dog guardians are asking why they alone are subject to losing privileges on Open Space for serial violations. What is the staff response to that?*

**Staff Response:**

Dog guardians have the opportunity to exercise voice and sight control privileges only after agreeing to the terms and conditions of managing a dog under voice and sight control. City staff are not aware of any other municipal open space programs that allow the extensive opportunities for off leash dogs provided by the City of Boulder. This privilege comes with a need for assurances that off leash dogs are in fact under control when participating in the Tag Program. Program privileges are based on a guardian’s agreeing to the requirements of voice and sight control and complying with the program regulations. The potential for suspension of privileges is also a term of complying with the expectations of the program. The suspension of privileges has occurred with guardians who have repeatedly violated the requirements of voice and sight control or for specific circumstances of aggressive dogs. Reinstatement of privileges can be accomplished by completing a demonstration test and re-attending the education class.

The loss of voice and sight privileges does not mean that guardians can no longer be accompanied by their dogs on open space unless otherwise mandated by a judge. Even when voice and sight privileges are suspended, guardians and their *leashed* dogs are welcome on OSMP trails and properties where dogs are permitted.

Similarly, commercial use on OSMP is allowed only after a commercial use permit is obtained which dictates special terms of use. Comparable to the Tag Program, this permitted activity can be suspended for rule infractions or violating the terms of the permit.

The City of Boulder also has services or locations where privileges can be suspended for rule violations. Examples of services include the library and recreational facilities. Additionally, the Boulder Municipal Court can issue no trespass orders for specific violations and circumstances preventing a person from returning to certain areas for a specified timeframe. Example locations include the Municipal Campus, Central Park, and the Pearl Street Mall.

**Question about Rabies Vaccination**

***Could an exception to rabies vaccination be provided for older or sick dogs, where a vet certifies that a rabies vaccination would propose a risk to the dog?***

**Staff Response:**

The exception already exists in the code. An amendment to 6-13-4 last year allows applicants to provide proof of current rabies vaccination **as provided in section 6-1-3, “Rabies Vaccinations.”** Section 6-1-3(a) says:

**6-1-3. Rabies Vaccinations.**

(a) Every owner or keeper of every dog, cat, or ferret over four months of age shall maintain a current rabies vaccination on each such animal. The vaccination required in this section shall be made by a veterinarian licensed by the State of Colorado using a vaccine licensed by the United States Department of Agriculture. **The requirements of this subsection shall not apply when the applicant produces a waiver issued by a veterinarian licensed by the State of Colorado affirming that the animal is medically unable to receive the required vaccination. This waiver must have been issued by the licensed veterinarian no more than one year before the date of the alleged violation.**

**Follow up questions from council member Macon Cowles:**

***1. If the proposed 1 and 2 strike rules were in effect during 2013, how many people would have lost GT privileges? I ask this because I am interested in whether we are catching serial violators.***

**Response:**

An answer to this question requires a complex analysis which staff is determining if and how we can do the analysis. Staff will follow up about if we can provide the requested information.

***2. People are complaining about having to re-up their GT's every year. Rabies vaccinations are available for a three year period. Are Boulder dog licenses available for a***

*three year period? If so, would we lose more than just current coordinates for a percentage of GT holders if the GT program enable people to get a three year GT?*

**Response:**

Dog licenses must be renewed every year. Rabies vaccinations need to be updated every one or three years depending on the type of vaccination given.

**3. *With respect to 6-13-4 that Requires attendance at an informational session for all guardians prior to applying for participation in the Tag Program, will people be able to take an on-line education course, or does this require them physically to attend a class?***

**Response:**

The education session (class) will require guardians to physically attend the class. It will not be available on-line. An important aspect of guardians attending the session will be the opportunity for staff and guardians to talk about the program and for guardians to get their questions answered. Having the guardian’s attend the session will develop a greater buy-in and understanding of the program expectations and requirements.

**4. *The stats on ticketed violations are impressive in that so many of them appear to represent ticketing of a dog guardian. I think it would be helpful to know the facts that led to people being ticketed for an aggressive animal. I wonder if any of those were issued for a dog injuring another dog in a fight?***

**Response:**

The table below includes the details on several aggressive dog citations from 2013 and 2012 that involve off-leash dogs. A brief summary of the incident provides details on the nature of the incident. The incidents involving aggression towards another dog are highlighted.

<b>DATE</b>	<b>INCIDENT SUMMARY</b>	<b>LOCATION</b>
8/13/2013	Off leash dog charged and bit boy scout on the buttocks. Victim turned and grabbed the dog’s collar and dog bit boy’s elbow. Owner reported that dog had nipped at kids before.	Green Mountain
10/27/2013	Two dogs approached family on bicycles and leapt toward a child with teeth barred, barking and growling. Guardians denied to victims that the dogs acted aggressively even though the dogs were behind them with their backs to the dogs. Rangers observed the dogs run into field of prairie dog homes and run from hole to hole. Dog guardians “did not know their dog could not chase wildlife.” Guardians didn’t see the interaction because the dog was behind him. One dog lunged and growled at a bicyclist while Ranger was talking with guardian.	Sage and Eagle Trails

4/18/2013	Victim walking leashed dog. Off leash dog approached and bit victim's dog two separate times. Guardian attempted to call the aggressor dog several times and was unsuccessful.	Bluebell Road
05/26/2013	Victim was hiking on trail and passed guardians with 2 dogs after asking if she could pass. Dogs were off leash, ahead of guardians. As victim approached dog growled and bit victim. Dog continued growling after victim asked guardian to leash the dog. Dog lunged a second time at victim. Guardian euthanized the dog because it bit someone again after this incident.	Sanitas East Ridge Trail
12/6/2013	Parent hiking with 5-year old twin daughters. Guardian 10' from off leash dog. Dog jumped on child, knocked child to ground, continued to jump on child and repeatedly push its snout into child's face. Guardian repeatedly attempted to call dog but dog was not responsive to guardian. (Guardian has V&S tag.)	Sanitas Valley Trail
10/19/2012	Dog off leash and with no V&S tag fights with another dog. While aggressor dog was attacking guardian kept shouting stop, stop, stop but the aggressor dog did not respond to these verbal commands. Aggressor dog seized victim dog by the back of the neck and drug her into the ditch. Aggressor dog guardian jumped into ditch, leashed the dog but was unable to control the dog. Aggressor dog was trying to move his grip to the front of victim dog's throat. Victim dog guardian jumped into ditch, tried to pull dog off victim dog unsuccessfully, punched aggressor dog and finally pried the jaws open to the victim dog could escape. Victim dog and guardian injured.	Community Ditch Trail
8/23/2012	Female victim running on trail when dog ran up and bit her on left leg below knee. Dog did not have V&S tag and was off leash.	Sanitas Valley Trail
2/20/2012	Guardians walking leashed dog on trail, two off leash dogs came on trail toward them. Unleashed dogs growled and charged at humans and the dog. No guardian in sight. Guardian later came around the corner and called the aggressive dogs numerous times. Eventually the aggressor dogs ran toward him. Same guardian had been charged with aggressive animal and dog off leash 3 years prior, same location.	Sanitas Valley Trail

5. *A comment: ranger resources would be leveraged greatly by an OSMP app that permitted other people to report Open Space violations as they occur. You could receive a description, a photo and a precise location of a violation that is occurring in real time and dispatch a ranger to that area to make an assessment. Has staff considered creating such?*

**Response:**

There is no need to create an “app”. Any citizen can call (303) 441-3333 and ask for a Ranger to be dispatched and/or contact them. While rangers will gladly receive a photo of a violation, we do not want to encourage a confrontation as there are frequently aggressive responses between citizens and toward Rangers from angry dog owners. Rangers also have a wide range of duties and responsibilities, beyond enforcing dog regulations.

**Questions from council member Mary Young:**

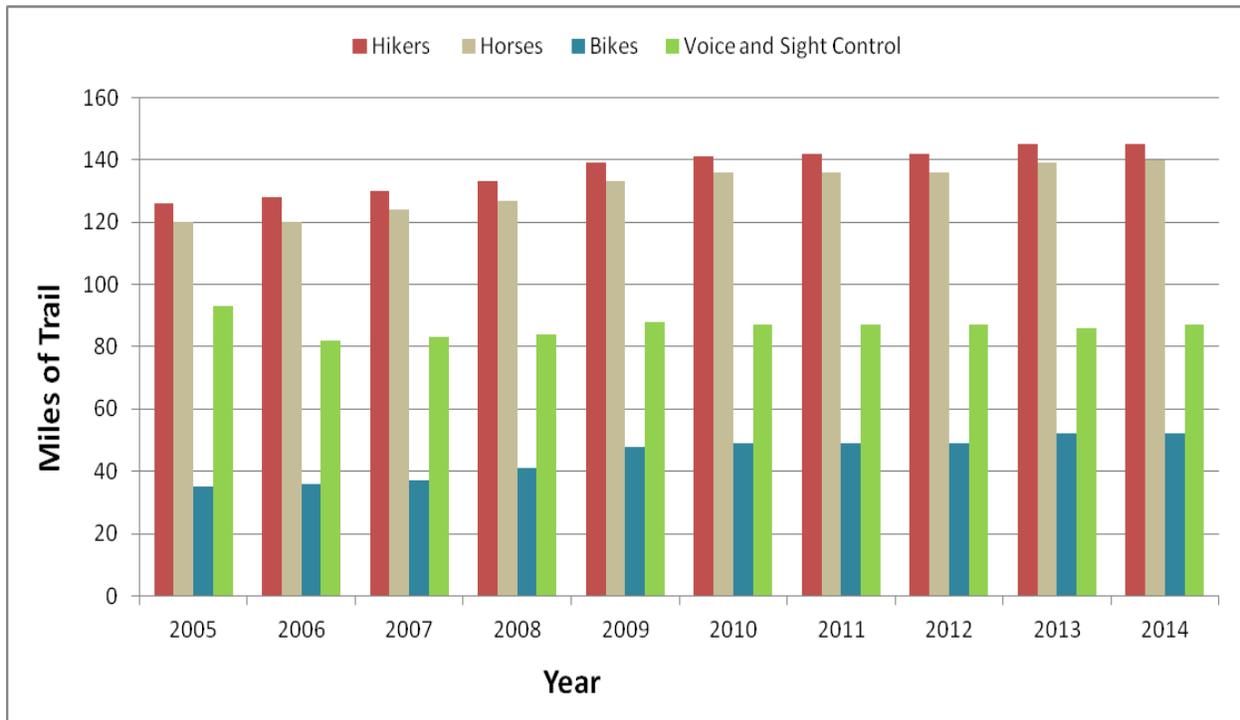
**Question:** 1. Would it be possible to provide annual data on the number of trails or trail miles available by user types (hikers, bikers, horses and dogs with green tag) since the inception of the green tag program or for a period long enough to identify a trend? And as a companion set of data to this, overlaid on the same graph, the cumulative number of green tags issued for the same period?

**Staff Response:**

The annual total of trail miles available for hikers, bikers, horses, and voice and sight control is provided below. Annual mileage totals include changes in management, new trail construction and changes to trail alignments. Mileage totals do not include trail and management changes approved in Trail Study Area plans that have not yet been implemented. The change in voice and sight control trails from 2005 to 2006 is a result of implementing several Habitat Conservation Areas and dog management changes included in the 2005 Visitor Master Plan.

**Miles of trail available on OSMP for four different activities from 2005 through 2014.**

Activity	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Hikers	126	128	130	133	139	141	142	142	145	145
Bikes	35	36	37	41	48	49	49	49	52	52
Horses	120	120	124	127	133	136	136	136	139	140
Voice and Sight Control Trails	93	82	83	84	88	87	87	87	86	87

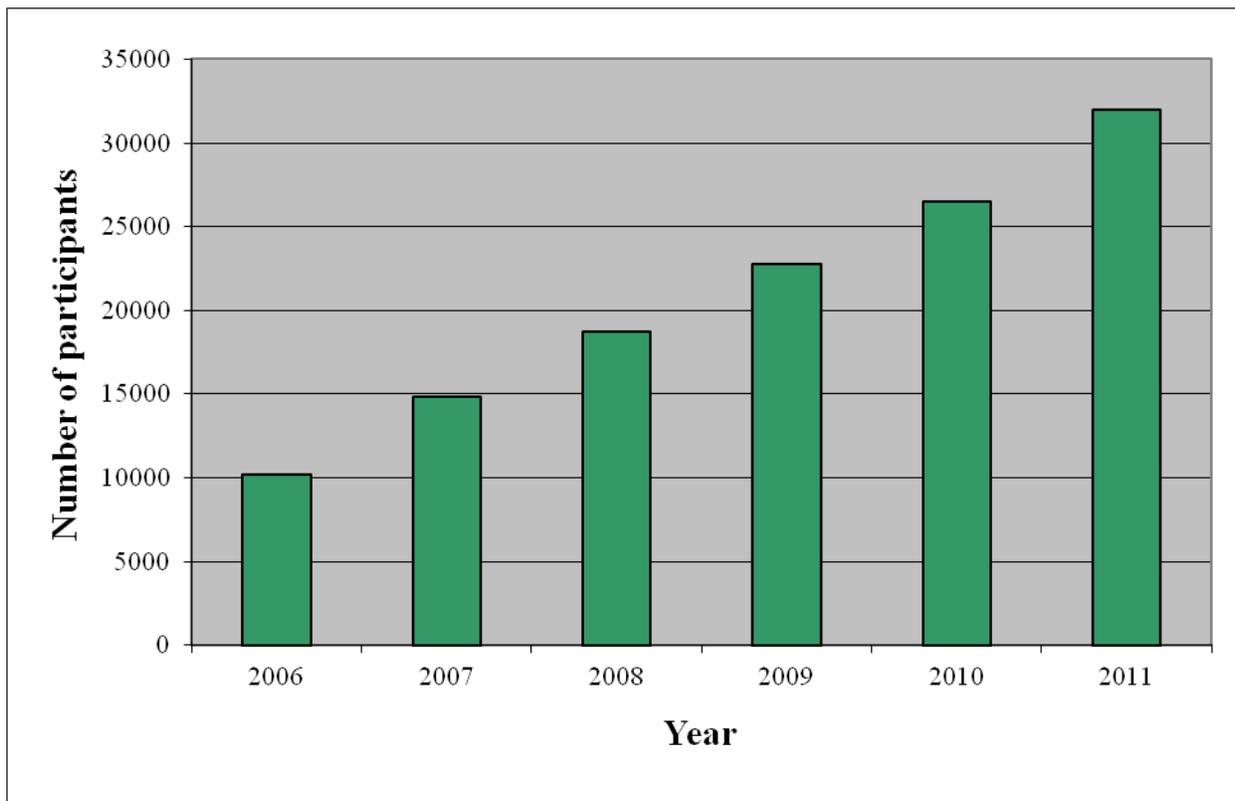


Approximately 32,000 participants from 18,000 households have registered in the Voice and Sight Program from its start in 2006 through 2011. During the same period, just over 29,000 tags have been distributed. The number of participants in the program has grown at a relatively steady rate, adding about 4,000 participants annually after the initial year, when approximately 10,000 participants registered. As of 2012, 41 percent of the households in the Tag Program are registered to mailing addresses within the City of Boulder and 59 percent are registered to addresses outside city limits.

When approved in the VMP, council wanted the program to be a one-time sign up. Consequently, the program does not include a process for updating participant information or renewing tags and it is likely that some registered participants and tags are no longer active. Some of the tags may include replacement tags and do not accurately represent the number of dogs participating in the program. Therefore staff believes the number of participants and households registered, or tags issued, overestimates the actual number of participants currently active in the program

Annual numbers of participation in the program were reported in the Voice and Sight Tag Program Monitoring Report after a detailed analysis of participation data. An analysis of annual numbers has not been completed for more recent years.

**Number of participants in the Tag Program from the program start in 2006 through 2011.**



**Question: 2. Is there a definition for "aggressive animal" in the code and if not, can we provide one?**

**City Attorney's Response:**

I am copying the code section prohibiting aggressive animals. It includes what I would consider a definition:

6-1-20. Aggressive Animals Prohibited.

(a) No person shall own or keep any aggressive animal. An aggressive animal is one that bites, claws, or attempts to bite or claw any person; bites, injures, or attacks another animal; or in a vicious or terrorizing manner approaches any person or domestic animal in an apparent attitude of attack, whether or not the attack is consummated or capable of being consummated.

(b) It is a specific defense to the charge of owning or keeping an aggressive animal that the person who was bitten, clawed, injured, or approached by the aggressive animal was:

(1) Attacking the aggressive animal or intentionally provoking the aggressive animal;

(2) Unlawfully engaging in entry into or upon a fenced or enclosed portion of the premises upon which the aggressive animal was lawfully kept or upon a portion of the premises where the aggressive animal was lawfully tethered;

(3) Engaging in unlawful entry into or unlawfully in or upon a vehicle in which the aggressive animal was confined;

(4) Attempting to assault another person;

(5) Attempting to stop a fight between the aggressive animal and any other animal; or

(6) Attempting to aid the aggressive animal when it was injured.

(c) The following specific defenses apply to the charge of owning or keeping an aggressive animal:

(1) The aggressive animal was defending itself, its young, or its guardian or keeper from an attack by another animal or a person.

(2) The animal that was bitten, injured, or attacked:

(A) had entered onto the premises of the aggressive animal; or

(B) had entered into a vehicle in which the aggressive animal was confined.

(d) Nothing in this section shall entitle a person charged with violating this section to present evidence of previous incidents involving the bitten, injured, or attacked animal.

(e) It shall not be a defense to owning or keeping an aggressive animal that the person who was attacked, bitten, injured, or approached in a vicious or terrorizing manner was a peace officer.

(f) For the purposes of this section, a person is lawfully upon the premises of a guardian or keeper when such person is on said premises in the performance of any duty imposed by law or by the express or implied invitation of the owner of such premises or the owner's agent.

**2 (a) Follow up questions by council member Young:**

**Would you clarify for me the following:**

*(d) Nothing in this section shall entitle a person charged with violating this section to present evidence of previous incidents involving the bitten, injured, or attacked animal.*

**Does (d) mean that previous charges cannot be brought in as evidence? If so, how does this work with the two strike rule? Please clarify.**

*(f) For the purposes of this section, a person is lawfully upon the premises of a guardian or keeper when such person is on said premises in the performance of any duty imposed by law or by the express or implied invitation of the owner of such premises or the owner's agent.*

**Would it be possible to interpret (f), in a case involving two dogs and respective guardians, that upon invitation by a guardian to approach an animal and the other guardian plus animal approach and after doing so the approaching guardian and/or animal are/is attacked the invitation would serve as a defense for the guardian with attacking animal?**

**City Attorney's Response:**

(d) is an evidentiary rule that prevents blaming the victim animal. It would not affect the two strike rule since it goes to the behavior of the victim.

(f) is a backwards definition of unlawfully on the premises. It is a defense if the victim was unlawfully on the premises. (f) attempts to explain that it's not a defense if the person had a legal duty to perform, e.g., a postal worker, or was there at the invitation of the guardian. The invitation would not serve as a defense, but would instead negate the defense.

**Question:** 3. What constitutes "protection of wildlife" and is there a definition in the code, if not, can we provide one?

**Staff Response:**

The table below includes both the state law with a definition for “harass” and the City of Boulder’s. Additional information is available in a Hotline response to council member Cowles’ question on this topic.

Colorado Revised Statutes (C.R.S.)	Boulder Revised Code (B.R.C)
<p><b>33-6-128.</b> Damage or destruction of dens or nests - harassment of wildlife</p> <p>(2) Unless otherwise allowed by commission rule or regulation, it is unlawful for any person to knowingly or negligently allow or direct a dog which he owns or which is under his control to harass wildlife, whether or not the wildlife is actually injured by such dog. Any person who violates this subsection (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of two hundred dollars.</p> <p>(24) "Harass" means to unlawfully endanger, worry, impede, annoy, pursue, disturb, molest, rally, concentrate, harr, chase, drive, herd, or torment wildlife.</p>	<p><b>8-3-5.</b> Wildlife Protection.</p> <p>No owner or keeper of a dog shall negligently allow or direct such dog to harass wildlife or livestock, whether or not the wildlife is actually injured by such dog, within any park, recreation area, or open space, or other property of the city, including, without limitation, any street or other right of way controlled or maintained by the city. This prohibition does not apply to any lessee of such property using a working dog to control livestock on the leasehold.</p>

**Question:** 4. Would it be possible to provide a table comparing fines assessed to various infractions by user group?

**Staff Response:**

Fines are determined after each infraction has been adjudicated through a court process. Staff is not able to summarize fines for the infractions by each user group without significant staff time dedicated to reviewing each individual citation and outcome to report this information as requested.

**Question:** 5. Would it be possible to review the list of the criteria for reinstatement of a green tag at second reading?

**Staff Response:**

The Voice and Sight Tag Program includes a process for guardians to reinstate suspended privileges by completing a demonstration test, the Voice and Sight Evaluation Test (VSET). The purpose of the evaluation test is to have a guardian and dog successfully demonstrate skills that indicate the ability to meet voice and sight control standards.

The VSET is conducted by a third party evaluator. The test is designed to determine a dog's ability to be under voice control in off-leash situations. The primary components of the test include a demonstration of the following skills:

- Walking under voice/hand control
- Meet and greet a dog
- Meet and greet a person
- Coming when called
- Reaction to wildlife

The test is on a pass/fail basis and the dog and guardian must complete the entire test and pass each skill to successfully pass the test.

In addition to successfully completing the evaluation test, the proposed ordinance would require these steps for a suspended Tag Program privilege to be re-instated:

- (1) Payment of a supplemental fee (currently \$50) established by City Manager Rule;
- (2) Providing written proof of attendance at a City of Boulder sanctioned presentation on voice and sight control of a dog;
- (3) Providing written proof of attendance at and successful completion of a voice and sight control evaluation as described, above; and
- (4) Certification by the applicant for reinstatement that he or she agrees to control any dog accompanying the guardian without a leash held by a person on certain City of Boulder lands where voice and sight control is permitted, in the manner described in the presentation on voice and sight control of a dog.

**Question: 6. Do we currently communicate via email with green tag users? If not, what methods are used to communicate with licensees?**

**Staff Response:**

OSMP has the email addresses for about 17,000 participants in the Voice and Sight Tag Program and have sent emails to the participants providing updates about the evaluation of the program and proposed changes. There has been a concerted effort over the last year to have participants update their contact information and provide emails so that staff can contact and update participants about changes to the program.

Dog licensees are mailed renewal notices each year with an information cover letter of both how to complete a license renewal and any upcoming changes to the licensing program. A utility bill insert was sent to inform Boulder residents of changes to the dog license program for 2014. The dog license program is in the process of updating the licensing software so that licenses may be applied for online by both to participating vets and dog licensees. This new on-line software will be more accessible for customers and should improve the efficiency for using emails to provide information to dog licensees. The program has an email address of [doglicense@bouldercolorado.gov](mailto:doglicense@bouldercolorado.gov) to receive customer emails.

## Questions from council member Mary Young:

Dear Open Space Staff,

The following two suggestions were sent to council in an email:

- 1) Require a fecal sample when dog owners apply for Open Space privileges or when renewing their dog licenses. The city would keep a file of the DNA and any poop samples found could be easily identified, and the owner fined accordingly.
- 2) Require owners to have their dogs pass the nationally recognized Canine Good Citizen test offered by the Boulder Humane Society and sponsored by the American Kennel Club. Identifying tags are issued and no extra work or processing would be required by the City of Boulder.

Did staff consider either of these options as part of the revised green tag program? Would it be possible to respond to the feasibility of implementing these ideas at Tuesday's hearing?

Thank you!

### Staff Response:

1) Dog Fecal Samples— No. Staff did not consider requiring fecal samples and setting up a system to manage this type of information for the enforcement of excrement removal rules. Staff will only minimally be able to discuss the feasibility of implementing such a system.

2) Canine Good Citizen Test— Yes. Staff did consider the American Kennel Club's Community Canine (Canine Good Citizen) test in assessing options to improve the Voice and Sight (Tag) Program. Staff initially proposed a skill demonstration test as a requirement for participating in the Tag Program; however, the proposal was not supported by the Open Space Board of Trustees. The Community Canine test is a helpful and informative "evaluation" to assess skills conducive to being in social situations, around other people and dogs. It could certainly be used as a measure of overall dog obedience and as a requirement for participation in the Tag Program. The disadvantage of the test is that it is done all **on leash** so it does not assess voice and sight control skills as is necessary for a reinstatement test. The Community Canine test was used as a resource for developing the Voice and Sight Evaluation Test.

## Questions from council member Andrew Shoemaker:

I have a number of questions for Staff, organized by subject, relating to the Green Tag Program proposals. I apologize if they have been asked or explained before, but I am trying to get up to speed on these issues as a new member of Council. Obviously, if answered in writing before, or if the information is readily available on the web, please simply point me to the location. Thank you very much for your time in addressing these questions:

### **Affected public lands:**

*(1) Does the map at <https://www-static.bouldercolorado.gov/docs/osmp-dog-regs-map-1-201312191612.pdf> include all public land that requires a green tag for off-leash privileges (including City land that is not OSMP-managed but nonetheless honors the green tags)? Put differently, if a dog lost its off-leash green tag privileges, does this map show all of the public areas in which the dog would not be permitted to run off leash due to the loss of privileges? If not, can you provide a map showing all affected public lands?*

**Staff Response** — No. The map of Open Space and Mountain Parks (OSMP) dog regulations does not include three city-owned lands where voice and sight control is allowed. These non-OSMP lands include Boulder Reservoir, Coot Lake and the dog park at Howard Hueston Park. A map showing the location of areas where voice and sight control is available on the OSMP Website at the following link: [https://www-static.bouldercolorado.gov/docs/Dog\\_Regulations\\_Systemwide-1-201403271353.pdf](https://www-static.bouldercolorado.gov/docs/Dog_Regulations_Systemwide-1-201403271353.pdf).

### **Dog excrement:**

*(2) I noticed that in at least one study, dog excrement was the number one source of conflict/concern for those surveyed. Anecdotally, it seems like that is the number one issue I have heard from the public over time. This is both an off leash and on leash problem. However, there seems to be little in the current proposal to address this issue. Why is that?*

**Staff Response** — The proposed changes to the Voice and Sight Tag (Tag) Program is not the primary means by which staff proposes to address excrement removal because, as you note, it is an issue related to both on-leash and off-leash dogs. However, increasing compliance with voice and sight control may improve dog excrement removal if more dogs remain in sight of their guardians or will be leashed for a portion of their visit (e.g., in the vicinity of a prairie dog colony). There is general agreement that guardians are more likely to remove excrement if their dogs are leashed or in sight.

The proposed changes to the Tag Program will address excrement removal in the mandatory education session. This means that every guardian in the program will have the opportunity to understand both the importance and the legal requirements of removing excrement. OSMP staff and the [Keep It Clean Partnership](#) are working together to have educational materials on the importance and benefit of dog poop removal available at the education session.

*(3) I note that only 7 citations were given in 2013 for this significant source of conflict (dog excrement). When considering the number of OSMP visitors with dogs, and it being a top conflict issue, catching this offense in the act is obviously quite rare. As such, enforcement doesn't work absent a huge fine (to counter the low percentage of getting caught). In my experience, peer pressure/social stigma is the only way to solve problems like this. Interestingly, rules on cleaning up dog excrement are not highly visible, but rather in small print on small stickers at trail heads. (For example, see the photographs at the Chautauqua trailhead, below). One place to start changing attitudes and creating peer pressure seems to be much better and more visible signage showing that this is a big deal for people in Boulder. Accordingly, has OSMP given thought to improving signage and engaging in a high profile education/marketing/signage campaign on this subject on trails?*

**Staff Response** — Yes. Staff agrees that while enforcement is important, it is not the most effective way to address the lack of compliance with excrement removal. Peer pressure discouraging problem behaviors and encouraging positive behaviors such removing dog excrement can be effective

Staff has undertaken a variety of actions aimed at reducing the amount of dog excrement left behind. These include visits by the “Poop Fairy”, a topical “[Scoop a Doop Poop](#)” song composed and routinely performed by one of the very popular Meadow Music players, attaching messages to bags of excrement left behind by dog guardians, cooperative clean-up activities with dog advocates on OSMP trails, and visitor surveys to better understand why excrement is left behind. OSMP staff also collaborates with the Keep It Clean Partnership to produce educational materials such as fact sheets and information pamphlets and to post signs along trails near streams to encourage guardians to pick up after their dogs.

While staff could certainly assess the effectiveness of larger signs, staff also seeks to balance community concerns about the size, number and aesthetic impact of signs on OSMP. Staff believes that there is adequate awareness among dog guardians about the requirement to remove excrement and among all visitors about the effect that dog excrement left along the trail has upon the quality of their experience.

**Wildlife protection and off leash revocation based on BRC 8-3-5(B):**

*(4) Is there quantitative evidence that dogs off leash on green tag trails are adversely affecting the wildlife population in Boulder County and/or in the Boulder OSMP system? If so, do we have data on the different types of wildlife and whether native or endangered?*

**Staff Response** —Yes. OSMP strives to protect populations of native wildlife, and also preserve the ability for individuals of these populations to experience their lives without excessive disturbance from humans or their dog companions. A variety of factors influence wildlife survival including disease, habitat alteration, invasive species, climate change and severe weather or natural events. These factors combined with impacts from human activities can have cumulative impacts beyond those seen from any single impact. OSMP recognizes that management of human and dog visitors to OSMP are often the only factor that land managers and the community have any ability to influence or control. As a result, although impacts to individuals or populations may happen naturally or from issues beyond our control, the

community can take action to protect wildlife from additional stressors related to human and dog activities. These protections may make a difference in a species or animal's long-term ability to inhabit OSMP.

Wildlife managers have found that detecting population declines can be difficult until they are well underway. As a result, once a decline is detected, management to stop the decline and recover the population is often difficult or impossible. In the case of a threatened or endangered species, population declines in one area may challenge the survival of the entire species. On OSMP, we are able to preserve healthy populations of some species that face extreme challenges or sharp population declines elsewhere. Examples of this include some grassland nesting birds, northern leopard frogs, and the federally threatened Preble's meadow jumping mouse. In these cases, substantial impacts to populations on OSMP could impact the stability of much broader populations or the entire species.

Despite abundant challenges to researching population declines, the community invests extensive time and funding on wildlife research and monitoring. Approaches to studying wildlife and populations include annual monitoring, research designed to answer specific questions, and working with outside researchers to address more difficult questions. Where these strategies are not able to provide answers to OSMP-related questions, research performed elsewhere or on different species is used to inform (validate or negate) our models of how our systems and species might respond. Recreational effects in general and dog impacts in particular, are extremely difficult to study. Designing controlled studies where the impacts of dogs can be isolated from other potential influences is very challenging in a field setting, and as a result, there are only a few studies that have looked directly at this topic. However, studies have been conducted on OSMP that directly examined the reaction of wildlife to dogs, or impact of dogs to wildlife. These were mostly performed by outside researchers. .

- Miller et al 2001:
  - Mule deer became "alert" (i.e., stopped normal activities) when dog on-leash off-trail approached to a distance of 100m
  - Mule Deer flushed when dog on-leash off-trail approached to 81m
  - These deer moved between 75 and 300m
  - Off leash dogs not examined
- Lenth and Knight 2008
  - Reduction in mule deer, small mammal and prairie dog use of habitat near trails was greater on trails with dogs than trails without dogs
  - Dogs on and off leash were not examined separately
- Beckoff and Ickes 1999
  - Prairie dogs disturbed frequently by dogs (by >60% of dogs) spent significantly more time being vigilant compared to prairie dogs that were subject to less disturbance (<15% of dogs).
  - Increased vigilance translated to less time feeding and caring for offspring.

Currently, staff is working with feline carnivore researchers from Colorado Parks and Wildlife and Colorado State University to see if their data can help to look at wildlife use related to time of day and level of human use. Despite the study stretching over multiple years and having in

excess of 700,000 photos of wildlife to analyze, answering questions related to dog activities is not possible. Even with this extensive volume of data, only a few examples of each treatment (dog on leash, no dog, dog off leash) were available—an insufficient number to adequately answer questions.

OSMP recently designed and implemented a study to examine issues related to specific impacts of management on wildlife in the Eldorado Mountain area as part of trail study area (TSA) implementation. Wildlife (largely ungulates- deer and elk) use was monitored using pellet plots and deer bed mapping before and after trail development in the area. The original design of this study included trails that allowed off-leash dogs, those that required dogs on leash, and ones that did not allow dogs. The intention was to be able to detect any differences in wildlife use of the area in relation to not only presence of people, but dog usage as well. [Unfortunately, despite successful completion over many years of monitoring, dog compliance was found to be too low to allow us to interpret our results related to dog use (on-leash trails had off-leash dogs, and no dog trails had dogs both on and off leash).] As a result, any controls for the effects of dogs were negated. Although the staff resources necessary to complete the study were extensive, the study provided an informative look at changes in wildlife use of the area due to recreation. But, the impacts of dogs independent of human users could not be determined.

As a result of the challenges associated with OSMP and outside researchers studying wildlife at the population level, particularly as related to a specific impact (dogs in this case) in a specific place (OSMP lands) staff rely on research completed elsewhere to build models and understanding about the likely impact to wildlife on OSMP from off-leash dogs that are not adequately controlled. Below are some brief summaries of this type of work that informs our understanding and our models. .

#### Some examples from the literature:

- Heart-rate significantly increased in bighorn sheep when a dog approached (MacArthur et al. 1982)
- Body temperatures were raised to temperatures conducive to mortality in deer which were chased by dogs (from normal temp of 101 to 109) [Gavitt 1973 from Sime 1999]
- When ground nesting birds or wading birds flush from their nests potential effects include increased energy cost combined with less time spent feeding and the risk of eggs or young being predated (English Nature Report 2005)
- 39% of observed dogs disturbed a total of 2,229 birds on a California beach, 75% of which flew from their original location (Lafferty 2001)
- Free running dogs significantly reduced the time sanderlings (small wading birds) spent foraging and significantly increased how far the birds moved in response to the disturbance (Thomas et al. 2002)
- Curlews in Israel were significantly more likely to abandon nests if harassed by dogs when eggs were removed as compared to egg removal without harassment by dogs (Brandwine and Carter 2006)

In an attempt to better understand dog interactions with wildlife and any associated impacts, OSMP regularly includes questions related to dogs and wildlife on a list of desired research topics distributed to universities and other research institutions. Staff has worked to identify

outside researchers who might be able to perform this research and when possible provided financial support to these researchers. We are hopeful that we will be able to supplement the information we have with additional work in this area.

*(5) With our bear situation, we seem to have more wildlife making the way through our Open Space buffer zone to the City (where they may be hit by a car, get addicted to our trash, relocated, or even shot and killed); do we know whether dogs in the OSMP lands buffering our City have any effect on urban wildlife in town?*

**Staff Response** — No. Staff is unaware of research that has addressed the relationship of dogs on OSMP and wildlife use of the developed portions of the city.

*(6) While some violations of law and behavioral norms are motivated by economic gain (for example, lack of a rental license, failure to follow environmental and building code regulations), it is my perception that off leash problems tend to relate to lack of education/awareness or neglect. Has OSMP performed any survey, study or other analysis to determine whether the proposed fee increases, annual renewal requirement, and increased educational requirements alone (without adding the threat of removing off-leash rights altogether) would make an impact on Open Space conflict issues?*

**Staff Response** — No. OSMP staff has not conducted the survey or study described in the question.

The potential for the suspension of privileges was included in the Visitor Master Plan (page 38) and implemented at the start of the Tag Program. The program as envisioned recognized the importance of both increasing awareness through education and having consequences for individuals that were not complying with the program requirements.

The Voice and Sight Tag Evaluation Report (link: <https://www-static.bouldercolorado.gov/docs/voice-and-sight-tag-program-evaluation-1-201306071558.pdf>) covers key issues discussed by the OSBT and community regarding ways the Tag Program could be improved. A key area of improvement that was identified (page 15) was that “penalties for noncompliance may not be sufficient or matched to the nature of the violation.” The staff and OSBT recommended changes include both encouragement for compliance through increased education and incentives for compliance through fines and potential suspension of privileges.

*(7) There is a great deal of concern in the community about whether a bird flushing or animal running away in response to a dog’s mere presence might result in a one-strike-you-are-out violation pursuant to BRC 8-3-5(b), which prohibits a dog from harassing wildlife. I have seen harassment in this context construed to include “annoying”, “worrying”, or “disturbing” wildlife. Since dogs on leash, hikers, climbers, children, and cyclists also often annoy wildlife, and the worst they receive for disturbing or even chasing wildlife is a fine, why the disparate treatment for off leash dogs?*

**Staff Response** — Violations of B.R.C. 8-3-5 (Wildlife Protection) applies to both people and dogs. Actions by people to harass or chase wildlife can also be cited. The frequency of

citations for people violating this ordinance is low because it occurs rarely. The potential suspension of Tag Program privileges is connected with voice and sight control privileges because of the potential and actual effects dogs have on OSMP wildlife and natural resources. The privilege of having a dog off leash on open space is dependent upon guardians having control of their dogs through verbal commands similar to the level of control that can be attained on leash. If a guardian participating in the Tag Program does not demonstrate the expected level of control, and a lack of control or negligence results in endangerment of wildlife, it seems reasonable and appropriate to require guardians to keep their dog leashed until they can demonstrate the mandated level of control.

*(8) The way I read BRC 8-3-5(b), a violation depends on the action or inaction of the guardian as well. It states that “No owner or keeper of a dog shall negligently allow or direct such dog to harass wildlife or livestock. . . .” Therefore, if the guardian attempts to recall the dog, and even if the dog does not obey, that would not normally (in my view) be “negligence” or “direction” by the guardian (rather, it is the dog disobeying). Therefore that would not, under my reading, be a violation of the provision absent extenuating circumstances (such as evidence that in other instances the dog is uncontrollable and should never have had a green tag in the first place). Is OSMP’s reading of this consistent with mine?*

**Staff Response** — No. In order for a guardian to be convicted of a B.R.C. 8-3-5(b) infraction, there must be a finding of negligent behavior or some direction by the guardian that allows the dog to harass wildlife. Not having the ability to control your dog as required by the definition of voice and sight control and as affirmed by the guardian in order to participate in the Tag Program could be considered an indication of negligence. To participate in the Tag Program, the guardian agrees to have the requisite control over any dogs managed under voice and sight control. The Boulder Municipal Courts have found guardians guilty of this violation even when the owner attempted control.

The importance of keeping dogs away from wildlife was recently emphasized by the Colorado Parks and Wildlife (CPW). A recent press release commented on the importance of keeping dogs away from wildlife to be compliant with state laws, prevent injury to wildlife, and injury to dogs. (<http://dnr.state.co.us/newsapp/press.asp?pressid=8764>).

*(9) Also, I assume that if a guardian sees a chase begin, and the guardian uses voice control and the dog returns, that is not a violation. Is that correct?*

**Staff Response** — In any incident involving a dog chasing wildlife, the context of the situation, actions of the guardian, behavior of the dog, and actions of the wildlife are important considerations. It is possible that a violation could occur even if a guardian attempts to use voice control. Considerations include the length of time that elapsed between the start of the chase and the guardian’s command and the guardian’s actions prior to the beginning of the chase. For example, a citation is unlikely in a situation where a guardian sees their dog become alert to the presence of wildlife, the dog begins to chase and the guardian is able to stop the dog promptly. Ideally, a guardian should be actively managing their dog, anticipating potential issues and addressing them in advance.

OSMP Rangers use their discretion and ability to look at the context in which an incident takes place including a discussion with the guardian in determining whether to issue a citation. Court proceedings also provide a check and balance to ensure that the situation legally fits the charges cited.

*(10) Assuming the definition of harass includes to “annoy”, “worry” or “disturb”, a part of the test for violation appears to be based largely on the wildlife’s reaction to the dog rather than to what the dog is actually doing. Since we are unable to speak to the wildlife (i.e., to find out if they are annoyed based on the dog, as compared to the nearby human, and/or based on whether the dog is leashed or off leash), and because wildlife often runs, isn’t the determination of harassment highly subjective? Is it OSMP’s position that if the dog simply stumbles on a deer or bird, and the wildlife reacts accordingly, why should that be a one-strike-you-are-out offense?*

**Staff Response** — Similar to the last question, whether an incident merits a citation depends on the combined actions of the dog, the guardian and the wildlife. Was the dog ranging far afield of the guardian, displaying “hunting” characteristics? Was the guardian attuned to their dog’s behavior and capable of managing it in an appropriate manner? Did the dog continue to pursue the wildlife after it was flushed? If a dog happens to just stumble onto a deer or bird, under voice and sight control it is expected that the guardian once aware of the situation, will redirect the dog away from any pursuit to avoid further disturbance. An action by a guardian to dissuade a dog from interacting with the animal(s) is key to understanding the situation and the culpability of a guardian. The degree to which wildlife reacts to the presence of a dog is important, however the guardian’s responsiveness to the situation and their ability to control their dog is what is most critical. The actions of the dog and guardian’s ability to control their dog are therefore most relevant to the demonstration of voice and sight control.

*(11) I note that there were only two citations in 2013 for dogs harassing wildlife, and yet there are over 30,000 participants in the green tag program based on OSMP’s response to Council Member Young’s question. Unlike dog excrement, of which there is physical evidence that there are violations well in excess of what the few citations represent, why does OSMP think there is a BRC 8-3-5(b) problem here that needs significant additional enforcement?*

**Staff Response** — City council members encouraged that there be a link between wildlife protection offenses and voice and sight control privileges during the November 13, 2012 city council study session. The OSBT also supported that B.R.C. 8-3-5 convictions result in the suspension of privileges until voice and sight control could be evaluated through a reinstatement process. A conviction of this offense merits the suspension of privileges because this violation indicates a significant breach of the requirements of voice and sight control.

The stated number of 32,000 program participants does not represent the number of actual or “active” participants. It indicates the total number of participants who have signed up for the program since the start of the program and is an overestimate of the current participation numbers. The actual number is unknown since there is no way to confirm if participants are currently using the privilege or not. Nevertheless, your point is taken that there are many visits by guardians and companion dogs that are participants in the Voice and Sight Tag program.

To clarify further, OSMP is not proposing additional enforcement.

Finally, the low number of 8-3-5 violations is consistent with the combined effect of the rangers' discretion and the courts' findings. Only the most severe or negligent incidents are being charged and convicted. Some charges of this violation may be reduced by the court to only voice and sight violations under 6-1-16.

***(12) In light of the significant increase in punishment and enforcement proposed for rule violations, is OSMP planning to improve the markings for seasonal closings? If so, will such signage also include a warning sign placed far enough in advance of the closing area that guardian can recall a dog (running ahead under voice and sight control) before that dog enters the closed area?***

**Staff Response** — Yes, in a few specific and select locations, advance warning signs may be used and be helpful. However, staff also balances the impact of signs upon the visitor experience as described above.

It is the responsibility of all visitors to observe OSMP regulations and for guardians to manage their dog so as to be in compliance with seasonal wildlife protection regulations. OSMP advises visitors with signs at the boundaries of seasonal closures, maps at trailheads, as well as both notices and maps on the OSMP Website and through public announcements. For many of the areas affected by wildlife protection regulations, the dates and areas affected are the same each year. Consequently, regular visitors tend to be familiar with the closures. Similarly in areas where dog prohibited trails or on-leash trails cross or join with voice and sight control trails, guardians are expected to proactively manage their off-leash dog to avoid rule compliance problems at the junction.

### **Improving the relationship and trust between OSMP and dog guardians:**

***(13) Dogs are very important companions to many of the citizens in Boulder, and they are viewed by many as a member of their family.<sup>1</sup> Based upon public statements at the last hearing, along with comments made directly to me by members of the community, the relationship between OSMP and dog groups seems to be strained. If the rangers' interaction***

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<sup>1</sup>Colorado is developing a growing reputation for its relationship with dogs. Last year, after public outrage over Denver police shooting several dogs in the line of duty, Colorado was the first state in the nation to pass a Dog Protection Act requiring law enforcement to undergo training on how to deal with dogs. In passing the law, the state legislature declared, among other things, that:

- “Dogs are one of the most popular and beloved animals in the United States”;
- Approximately 46 million U.S. households contain at least one dog;
- “Colorado is often listed as one of the top states in per capita dog ownership”;
- “Many Coloradans cherish their dogs and consider them to be members of their families.”

Colorado is one of 12 states to have identified a state pet, and Colorado's state pet is the shelter pet (i.e., dogs and cats). Boulder likewise has a reputation tied to its treatment of dogs and pets. In 2000, Boulder made the symbolic move of changing the term “pet owner” to “pet guardian”; in the wake of that change, at least 18 other cities followed suit. One of Boulder's original Open Space promotional pieces includes a family with a dog off leash. Boulder's District Attorney was the first in the state to obtain a courthouse dog (Amigo).

*with guardians tends to be enforcement-related, that can create a culture of fear – particularly where there is significant discretion or subjective determination to be made by the ranger, and the result can be the revocation of the privileges of a pet that is considered to be a family member. This type of relationship (between the citizens and law enforcement) often encourages a reactive disobedience – indeed, there is already a website providing for the reporting of the location of OSMP rangers, and I would not be surprised to see (assuming the relationship continues down the current path) that a smartphone app would be developed on the subject. In circumstances where there is such tension (for example, where neighborhoods in large cities feel at odds with local law enforcement), groups often are put together to develop a working relationship between the group and the authorities to increase understanding by both sides and better collaborative solutions to whatever problems might exist. Are there any projects where OSMP is working with the dog community in a collaborative manner?*

**Staff Responses** — Yes. An OSMP ranger on average issues about one ticket per week for dog related offenses, most of which end neutrally or positively. In that same timeframe OSMP rangers interact with hundreds of people including dog guardians. Most of these interactions are very positive. Results from visitor surveys indicate a high degree of satisfaction with trips on open space, and interactions with rangers have never had a significant negative impact on visitors' experiences. Rangers and visitors mostly engage in friendly conversations, with rangers answering questions, providing trail directions, leading impromptu naturalist talks, or during formal educational presentations. Rangers also provide assistance to members of the public in times of need such as during wildland fires and other disasters, search and rescue incidents, and emergency medical responses. For every negative encounter with a dog guardian, community members enjoy far more encounters that are positive and greatly appreciated.

In addition, an OSMP staff member meets regularly with the Friends Interested in Dogs and Open Space (FIDOS) to discuss their issues and interests and to build a collaborative relationship.

*(14) For example, as discussed above, one of the key sources of conflict between user groups and dogs is with dog excrement. Are there any collaborative projects between OSMP and the dog groups on cleaning up dog excrement?*

**Staff Responses** — Yes. OSMP has worked collaboratively with representatives from the dog community on several occasions to organize volunteer excrement cleanup events. A typical scenario for such an event would be OSMP staff would coordinate with FIDOS on lining up volunteers and then provided a table with education outreach materials and free leashes. OSMP and FIDOS would generally send out email solicitations to volunteer list groups and post these opportunities on the respective websites. These efforts were successful in ensuring some areas were cleaned-up.

OSMP staff remains open and interested in working with stakeholders on efforts that improve the quality of visitor experiences and build relationships between the department and community stakeholders in ways that support the programs and policies of the city.

***(15) I noticed on Boulder County Open Space (Twin Lakes), that a private group has adopted a trail (much like businesses do with stretches of highway) and received sign recognition. Do we do that in the City, and if not, why not?***

**Staff Response** — No, not exactly like the county. Under Boulder County’s Adopt a Trail program, families, small groups, and individuals can "adopt" a trail, park, or shoreline, by picking up trash four times a year. A sign is posted by the county at the trail or park in recognition of the volunteers’ efforts.

OSMP has a rather extensive volunteer Trail Guides program. This volunteer group functions similar to an adopt a trail program whereby individuals who participate in the volunteer program are regular visitors to OSMP and after going through a required training program, provide information and assistance to visitors and help staff monitor the conditions on OSMP .

***(16) What are the requirements if a dog group wishes to engage in a dog excrement cleanup on OSMP lands?***

**Staff Response** —For groups under 25 people there would be no special requirements and for groups 25 and larger there would be a need to complete a special use permit application. The permit is free, the application process provides opportunity for staff to ensure that large group activities occur in areas suited for the activity and do not conflict with activities planned by other groups.

To collaborate with OSMP, groups only need to contact the department and express an interest. The department and the community organizers would discuss arrangements and determine how best to coordinate efforts.

***(17) Obviously, many love and agree to fund OSMP lands because of off leash policies. Are there any projects or exhibits where Boulder’s (and OSMP’s) positive and historic relationship with dogs has been honored or integrated into the Open Space staff culture? For example, has there been any discussion of Open Space preparing an exhibit honoring and addressing the history and presence of dogs on Open Space?***

**Staff Response** — No. There have not been any specific projects or exhibits done by OSMP that cover the historic relationship of dogs and OSMP. OSMP hasn’t had exhibits or interpretive signs addressing the historical importance of any user group.

Included in the recommended education and outreach strategies proposed with the other revisions to the Tag Program is a strategy to “Provide educational walks for dogs and dog guardians on a trial basis.” The OSBT and staff discussed this strategy and identified the following possible approaches to implement this strategy:

- Dog training Natural Selection hikes
- Design programs with interesting topics such as hero dogs, dog training for search and rescue, etc.
- Dog inclusive nature hikes

***(18) Does the Open Space department serve as a guardian for any dogs, and if not, has there been any consideration of having a model dog or two as mascots to walk with a ranger, demonstrate to the public proper green tag compliance and trail etiquette, and demonstrate to OSMP staff what can realistically be expected of well-trained dogs?***

**Staff Response** — No, the department does not serve as a guardian for any dog. However, dogs have had a role in the organization as ranger service dogs partnering with rangers on patrol. In addition, Volunteer Trail guides can bring their dogs along with them on leash to both have the companionship of their dog while doing volunteer work but also to be recognized as a peer by dog guardians visiting OSMP trails.

The department depends on the local community of professional dog trainers and the Humane Society of Boulder Valley to be the best resource for guardians seeking to understand how to develop healthy relationships with their dogs and set reasonable training and behavior expectations. OSMP staff has worked with the Humane Society of Boulder Valley and professional dog trainers to seek advice on dog behavior, training, and ways to promote good dog/guardian citizenship.

***(19) Thinking long term, it seems as if getting puppies and young dogs into the practice of correct conduct and learning on OSMP lands would be a good thing. If the first time a dog sees a deer while off leash is on Open Space, the result is somewhat predictable. Accordingly, some training on OSMP land might be a good thing. What, if any, dispensation is there for puppies or young dogs learning voice-and-sight on Open Space? Could some trails be designated for a “learner’s permit” type status, where your record is cleared once you get a full green tag?***

**Staff Response** — Staff agrees that guardians interested in participating in the Tag Program should train and build voice and sight control skills for dogs of all ages including young dogs and puppies. The best way to achieve this is through the use of professional dog trainers and training offered through organizations like the Boulder Valley Human Society.

Staff is not proposing any special areas or exceptions to the rules for training dogs (regardless of age) on city OSMP lands. Voice and sight control skills should be predictable and well trained before the dog and guardian exercise that privilege on OSMP. Many people visit OSMP lands, and expect dogs to be leashed or under voice and sight control. Furthermore there are many distractions and safety concerns for a dog not under voice and sight control. The training of puppies is likely most beneficial and successful when done in areas that create a positive and safe learning environment which is not often the situation on OSMP.

**Testing:**

***(20) It seems that if a dog passes the test for reinstatement, the dog clearly is capable of functioning in the green tag program. (I assume it would be difficult for a dog to pass on luck). As such, once passing that test, why should there be any threat going forward of ever removing the green tag privilege for the dog (other than in an aggressive dog situation)? As for the guardian, why not allow increasing fines – based on the number of violations – with***

*discretion given to the judge for increased fine amounts and revocation if the judge feels necessary?*

**Staff Response** —A dog and guardian that have passed the Voice and Sight Evaluation Test would have demonstrated the skill competency for reinstating voice and sight control privileges. However, the demonstration does not guarantee that both the dog and guardian or the dog with a different guardian will evermore be in compliance with the requirements of the Tag Program. If the guardian and dog are subsequently convicted of offenses that again cause the suspension of privileges, a consistent application of the requirements for reinstatement and the demonstration of the skills needed for voice and sight control is appropriate. Irresponsible or negligent actions of the guardian, lack of maintaining and reinforcing the skills necessary for voice and sight control or changes in behavior by the dog are all possible scenarios where the demonstration of skills would be beneficial.

*(21) What if a citizen wished to test his or her dog prior to using green tag privileges? Could that be incentivized by allowing the guardian to use a third party training system through a program where, if the proactive test-taking dog failed, the information would not be sent to OSMP? If the dog passed, as noted above, should the dog ever be threatened with losing its privileges (other than in an aggressive dog situation)? In other words, the dog is a trained dog, and presumably it would be the guardian's fault (or, one of those instances where dogs, like humans, aren't always perfect). We want to encourage trained dogs to be the ones on Open Space.*

**Staff Response** — The Visitor Master Plan included provisions that the Voice and Sight Evaluation Test would be both for the reinstatement of suspended privileges and as an opportunity for dog guardians to voluntarily take the test to assess voice and sight control abilities with their dog. As a voluntary test, it only is for the benefit of the guardian to understand their voice control skills and help identify any potential training needs. Similar to the previous answer though, the demonstration test does not guarantee that a guardian and dog will maintain or always meet the requirements of voice and sight control. If not and privileges are suspended, the demonstration test should be repeated.

*(22) In OSMP's response to question 5 by Council member Young, OSMP describes one of the test criteria as "reaction to wildlife." Many dogs will "react" instinctively to wildlife (particularly if the wildlife starts running, triggering the chase instinct), and they key should be whether the dog stops when the guardian issues the voice command, even if the dog's initial instinct is to chase the wildlife. Is the reinstatement test going to require that a dog not react to wildlife at all, or will it be sufficient that it responds to the guardian's responsive voice control?*

**Staff Response** — The evaluation test will assess if a dog can be managed around wildlife and that the guardian has the ability using verbal commands to prevent the dog from chasing a simulated situation of wildlife running away. A successful demonstration of this skill does not require that a dog not react to wildlife, but rather that the guardian can verbally control or prevent the dog from chasing and that the dog is responsive the guardian's commands.

*(23) Other than what was provided in response to Council member Young's questions, can you provide any more detail about the testing that will be required for reinstatement?*

**Staff Response** — Yes. A working version of the Voice and Sight Evaluation Test (VSET) is attached at the end of the document. The test was developed collaboratively between OSMP staff, Parks and Recreation staff and the Humane Society of Boulder Valley when the Tag Program was started. Community feedback from stakeholders was integrated into the working draft. There has been only one guardian with suspended privileges interested in the evaluation; however, they never requested the evaluation test.

**Fees:**

*(24) Has any consideration been given to providing resident green tag pricing to persons who live outside of Boulder yet work in the City (and therefore regularly pay the Open Space tax)?*

**Staff Response** — The proposed fees for resident and nonresident Tag Program participants were carefully considered by staff, the OSBT and city council. Boulder residents are required to pay both the Tag Program registration fee and the annual cost of a Boulder dog license. If non residents working in Boulder were to be charged only the resident rate, they would have a lower overall cost than Boulder residents — unless they were also required to get Boulder dog licenses or their registration fees were increased an amount equal to the cost the dog license.

Additionally, to include such an option would add a significant cost to the Tag Program in terms of staff time required to validate some form of proof of work location.

## **Voice and Sight Evaluation Test**

### *Working Draft*

The Voice and Sight Evaluation Test (VSET) is intended to determine a dog handler's ability to manage a dog under the requirements of voice and sight control. It also educates dog handlers about the skills and behaviors necessary to manage well behaved dogs. Any dog handler who has had their voice and sight privilege suspended must pass the VSET in order to regain the privilege. The VSET can also be used by dog handlers as a measure of their ability and that of their dog's to meet voice and sight control requirements.

This test is designed to determine a dog's ability to be under voice control in off leash situations with its handler. Each section will be evaluated with the dog off leash under voice control. The dog must complete the entire test and pass each skill to successfully pass the test. All skills of the test will be evaluated on a pass/fail basis.

### **Test requirements**

To qualify for the test, the handler must possess a current rabies' certification or City of Boulder dog license for the dog participating in the test and provide photo identification (driver's license, state ID card, passport). The test will be performed with a flat buckle collar and dog tags as the only items attached. Test locations will be determined by the evaluator and be comparable to locations that the City allows voice and sight control (natural area with trails). The evaluator may, at any time, terminate the test if they determine the dog cannot safely be controlled by the handler.

**All tests (except the warm-up element) will be performed off leash under voice control with the handler having a leash in their possession.**

### *Passing the test*

A Handler/dog team must receive a passing score for each of the pass/fail components to pass the VSET. The handler will receive a score card indicating their performance and a copy of the evaluator's comments. A certificate of completion indicating that they have successfully passed the Voice and Sight Evaluation Test will be provided to the handler and to the City of Boulder. The certificate does not in any way excuse the handler from obeying all applicable regulations.

### **Failures – Dismissals**

Any dog that growls, snaps, bites, attacks, or attempts to attack a person or another dog will be dismissed from the test and failed at the discretion of the evaluator. A completed test with one or more failed exercises will result in a failure of the VSET. The evaluator may, at any time, excuse the dog and handler from completing the test due to a dog that cannot safely be controlled by the handler.

**Ground Rules:**

1. The handler is required to comply with all ground rules to pass the test.
2. Praise and encouragement for supporting desired dog behavior is appropriate. Excessive encouragement to avoid problem behavior will be discouraged when it is determined to be detrimental to the evaluation process.
3. Limited verbal corrections will be allowed. The evaluator will provide one warning to the handler if excessive verbal corrections are being used.
4. Training aids such as food and toys while valuable as training aides cannot be used.
5. The handler must maintain continual control of the dog. No more than two recall commands to gain control of a distracted dog will be allowed.
6. The handler must make sure any dog lagging behind is not more than ten feet away. The evaluator will provide one warning to the handler if excessive lagging occurs.
7. Abuse (physical, verbal) of the dog will not be tolerated at any time.
8. The handler is responsible for the care and safety of the canine at all times.
9. Aggressive behavior by the dog will not be tolerated at any time.

## **Evaluation Test**

### **1. Warm-up Exercise (Walking on Leash)**

This exercise allows the handler and dog to prepare for the test and demonstrates that the handler is in control of the dog and both are ready for the test. The evaluator will use a pre-plotted course to direct the handler/dog team and provide instructions or commands. There will be an about turn with at least one stop as requested by the evaluator. The handler may talk to the dog along the way, praise the dog, or give commands in a normal tone of voice. The handler may sit the dog at the halts if desired.

### **2. Out for a Hike (Walking under Voice Control)**

This test demonstrates that the handler while walking with their dog can maintain control of the dog as it encounters people and distractions commonly experienced on City properties where voice and sight control is allowed. The dog need not be perfectly aligned with the handler through this exercise, however the dog's position relative to the handler should leave no doubt that the dog is attentive to the handler's movement and commands. The handler will walk with the dog under voice control past various distractions and people along a defined route. The dog may show natural interest and curiosity and/or may appear slightly startled but remain under control and should not panic, try to run away, show signs of aggression, chase or bark. The dog may not come into contact with any of the pedestrians. The handler may talk to the dog and encourage or praise the dog throughout the test.

### **3. Meet and Greet (Person)**

This test demonstrates that the dog will remain with the handler and under control while the handler contacts another person. This exercise will be done in a group of other leashed dogs and distractions. The handler will walk with their dog as directed by the handler and approach the evaluator. The handler and evaluator will shake hands and engage in a brief discussion. The dog must stay in close to the handler and be under control for the duration of the exchange.

### **4. Meet and Greet (Dog)**

This test demonstrates that the dog is able to greet another person and dog and respond to the handler's command to come regardless of distractions. The handler and dog will walk toward an approaching dog and person. The handler will allow their dog to meet the other dog and while the dogs are greeting the handler will walk away. If the handler gets more than 20 feet from their dog they will call their dog to them with no more than two commands. The dog must come directly to the handler using only minimal verbal encouragement.

### **5. Coming when Called**

This test demonstrates that the dog will come when called by the handler. The handler will walk 20 feet away from the dog, turn to face the dog, and call the dog to them. The handler may use verbal encouragement to get the dog to come. The dog must come directly to the handler upon command without being distracted. To obtain a twenty foot distance from their dogs, handlers may choose to tell dogs to "stay" or "wait" or they may simply walk away giving no instructions.

### **6. Reaction to Wildlife**

This test demonstrates that the dog can be managed around wildlife. The handler will walk with the dog off leash as directed by the evaluator. A simulated flushed (running away) small animal will be encountered. The handler must demonstrate the ability to prevent the dog from chasing the animal. The dog may show natural interest and curiosity but remain under control.

### **Test Completion**

Upon completing the final skill, the handler will be advised of the completion of the test and be encouraged to praise their dog.