

Report
Evaluation Team Review of the Effects of Personal Email Use
on the Planning and Rulemaking Process for the
Golden Gate National Recreation Area
Dog Management Plan
August 3, 2017

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I. Introduction

A. Background

In January 2017, the National Park Service (NPS) developed a task directive for the “Evaluation of Effects of Personal Email Use on the Planning and Rulemaking Process for the Golden Gate National Recreation Area [GGNRA] Dog Management Plan.” It was developed due to “[t]he discovery of the use of personal email without the attendant copying or forwarding of such communications to an official government email account [that] has raised questions about the potential effect these emails may have had on the dog management planning process.” The task directive called for the establishment of an Evaluation Team to review the planning and rulemaking process for the Dog Management Plan. The NPS Natural Resource Stewardship and Science Directorate requested the assistance of the Department of the Interior’s (DOI) Office of Environmental Policy and Compliance (OEPC) in carrying out the task directive.

B. Purpose of the Review

Per the task directive: “[t]he purpose of this factual evaluation is to review whether the use of personal email may have affected the planning and rulemaking process for the GGNRA Dog Management Plan. Specifically, the evaluation will analyze the nature and substance of the email messages to ascertain if there is evidence that they influenced the content of the Dog Management Plan or rule and the conclusions of the EIS [Environmental Impact Statement]. The evaluation will assess whether use of personal email in this case resulted in any inconsistencies or deviations from ordinary procedures for environmental planning and rulemaking for the National Park Service.”

C. Reviewers and Qualifications

The task directive called for the evaluation to be “conducted by an independent and impartial team composed of three to four individuals from relevant federal agencies and departments.” The Evaluation Team members are to “have expertise in environmental planning and review, the National Environmental Policy Act (NEPA) and rulemaking procedures.” Evaluation Team members “will not have any past history or current involvement with the GGNRA dog management planning or rulemaking process.” The OEPC asked headquarters-level NEPA contacts in the Department to seek qualified candidates that were responsive to the NPS request. Interested Departmental staff sent information to the NPS task directive point of contact with information on the requested expertise.

The NPS selected three staff from the responses, one from OEPC, one from the Office of Surface Mining Reclamation and Enforcement (OSMRE), and one from the Bureau of Land Management (BLM). The OEPC member has a Bachelor’s and Master’s in Planning, over 20 years of NEPA experience in the Federal government as a NEPA practitioner in project and policy development and compliance guidance, and has been involved in multiple Federal rulemaking processes, including on NEPA and associated environmental regulations. The OSMRE member is a Professional Engineer with a Bachelor of Science in Civil Engineering and over 25 years of combined private, state, and Federal experience as a NEPA practitioner in project management, policy guidance, rulemaking, and regulatory compliance. The BLM member has a Bachelor’s in Biology and Master’s in Environmental Management and Policy, as well as 14 years of combined experience as a NEPA practitioner in the private sector and Federal government, including experience in NEPA project management and policy development.

D. Information Provided for Review

The NPS gave a briefing created for the Evaluation Team members to provide background, context, and the history of the dog management planning process. Additional information provided to the Evaluation Team included:

- Numerous emails and email attachments,
- Background documents,
- NPS-created project documents for internal and/or external use during the dog management planning process, and
- Weblinks to project websites and stakeholder websites.

The emails that were the focus of the NPS review included both individual and email chains, primarily associated with the personal email account of one former NPS employee, Howard Levitt. Mr. Levitt was the Director of Communications and Partnerships at Golden Gate National Recreation Area (GGNRA) until October 2016.

The initial scope of the review by the Evaluation Team was the emails and related documents provided by the NPS for the review. The review of these documents led the Evaluation Team to request additional documents and information that also became part of the review. Supplementary documents were also accessed from publicly available information on the Internet related to the GGNRA dog management planning, environmental review, and rulemaking process.

II. NEPA and Rulemaking Processes

This section provides an overview of the requirements for NEPA and rulemaking processes and a summary of the NEPA and rulemaking processes followed for the GGNRA Dog Management Plan. Knowledge of these requirements is needed in order to assess if the emails might have influenced the alternatives considered or compromised the analyses or information that formulated the decision-making process.

A. NEPA Regulations and NPS Guidance

Compliance with NEPA is required for all Federal actions and it ensures that before decisions are made by the Federal government, information on the potential environmental effects of the action is provided to the public and interested parties and is considered by the decision-maker in the process. The purposes of NEPA (Public Law 91-190--Jan. 1, 1970) is “to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.” To carry out the policy, NEPA directs:

- “...it is the continuing responsibility of the Federal Government ..., to improve and coordinate Federal plans, functions, program, and resources to the end that the Nation may - fulfill the responsibilities...as trustee of the environment...; assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;”...

- that “all agencies of the Federal Government shall...utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man’s environment;”... and ...
- to “...study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources”.

CEQ provides regulations and guidance on NEPA implementation and also requires each Federal agency to have procedures for its NEPA process. The NPS is required by both the NPS Organic Act and NEPA to plan and make informed decisions that help preserve park resources and values. For NEPA, the NPS utilizes the CEQ regulations (40 CFR 1500-1508), CEQ guidance documents, DOI NEPA regulations for complying with NEPA (43 CFR Part 46), the NPS Director’s Order 12 (2011) and NPS NEPA Handbook (2015). (<https://www.nps.gov/subjects/nepa/policy.htm>)

B. GGNRA NEPA Process

In review of the information provided and supplemented by request, the Evaluation Team noted an approximate 15-year (2002 to present) rulemaking process for the GGNRA Dog Management Plan (referenced further as “Project”). The NPS identified a need for the rulemaking based on an increase in park violations, increase in user conflicts in the GGNRA, Emergency Petitions, and court orders requesting resource protection in relation to a 1979 Pet Policy. The Evaluation Team noted the following major milestones and dates for the development of the GGNRA Dog Management Plan:

(* *Public Involvement Notifications*)

Notice of Intent to Prepare EIS*	February 2006
Scoping*	2002 - 2006
Purpose and Need for Project	Provided in 2006 with comment request
Public Scoping Comment Analysis	August 2006 (<i>Over 500 comments</i>)
Alternative Development and Analysis	2006 - 2010
Draft EIS Published and Notification*	January 2011
Public Comment Period	January 14 to May 30, 2011
Public Meetings	March 2011
Public Comment Summary Report	August 2011 (<i>Over 5,000 comments</i>)
Public Comment Response Report	September 2013
Supplemental EIS Published and Notification*	September 2013
Public Comment Period	September 6, 2013 to February 18, 2014
Public Meetings	November 2013
Public Comment Summary Report	February 2014 (<i>Over 6,700 comments</i>)
Final EIS Published and Notification	December 2016 (<i>30-day no action period</i>)

Public involvement and participation opportunities during the development of the Project are noted above with an asterisk (*). The general process and schedule for the Project were available on the NPS Project website along with materials generated by the NPS Project Team, such as public notices of meetings, documents, and additional Project related links. The website also includes a phone number and email address for additional inquiries or comments.

C. Rulemaking

Pursuant to the Administrative Procedure Act (APA), Federal agencies must follow an open public process when they issue regulations. There are many statutory rulemaking requirements incorporated in a Federal rulemaking process. As outlined in *Federal Rulemaking Process: An Overview* (Congressional Research Service, June 2013), the process includes opportunities for public comment and in general incorporates the following major steps:

- Initiating Event and/or Advance Notice of Proposed Rulemaking
- Agency Develops Draft Proposed Rule
- Review/Approval of Draft Proposed Rule within the Agency
- Office of Management and Budget/Office of Information and Regulatory Affairs (OMB/OIRA) Review of the Draft Proposed Rule
- Publication of the Notice of Proposed Rulemaking
- Public Comment Period
- Response to Public Comment/Development of the Draft Final Rule
- Review/Approval of Draft Final Rule within Agency
- OMB/OIRA Review of the Draft Final Rule
- Publication of the Final Rule followed by multiple opportunities for disapproval and/or challenges
- Rule Takes Effect

D. GGNRA Dog Management Plan Rulemaking Process

The Evaluation Team noted the following major milestones and dates for the Project rulemaking process:

Advanced Notice of Proposed Rulemaking	2002
Notice to Establish a Negotiated Rulemaking Committee	June 2005
Committee Meetings	March 2006 to October 2007
Draft Proposed Rule	February 24, 2016
Comment Period	February 24 to May 25, 2016

The NPS timed the rulemaking notices, rule development, committee meetings, and publication of the proposed rule to align with the NEPA decision making process. This approach integrates both the rulemaking and NEPA decision processes, providing well-timed opportunities for public participation and comment in the decision making process.

E. NPS Project Team

The primary NPS Project Team members and their roles involved with the development of the Project over the 15 years of study are listed below:

1. Shirwin Smith (a proposed rule primary author, GGNRA Management Assistant, and

- GGNRA Project lead until retired, January 2014)
2. Michael Edwards (technical on NEPA process)
 3. Mike (Michael) Savidge (technical on rulemaking)
 4. Howard Levitt (GGNRA Communications and Partnerships Director until retired, October 2016)
 5. Kevin Cochary (technical on law enforcement)
 6. Chad Marin (technical on law enforcement)
 7. Daphne Hatch (technical on resource management)
 8. Bill (William) Merkle (technical on resource management)
 9. Brian Aviles (technical on broader park planning)
 10. Christine Fitzgerald (planning liaison to San Mateo county)
 11. Susie Bennett (technical on resource management)
 12. Mia Monroe (planning liaison to Marin county)
 13. Craig Scott (technical on maps/Geographic Information Systems)
 14. Katie Beltrano (program manager, interim commercial dog walking permit program)
 15. Jenny (Jennifer) Treautlauer (technical on business management/cost recovery)
 16. Dan Collman (technical on facilities management/maintenance)
 17. Dave Williams (technical on urban law enforcement/U.S. Park Police)
 18. Tim Hodges (technical on urban law enforcement/U.S. Park Police)
 19. Abby Sue Fisher (technical on Section 106 compliance)
 20. Chris Lehnertz (former NPS Pacific West Regional Director; General Superintendent GGNRA (April 2015- August 2016)
 21. Frank Dean (former General Superintendent GGNRA from 2009-February 2015)
 22. Aaron Roth (former Deputy Superintendent, February-April 2015; Acting Superintendent, August 2016-November 2016)
 23. Brian O'Neill (deceased former General Superintendent, approximately 1986-2009)
 24. Alex Picavet (public affairs officer, until May 2016)

III. GGNRA Evaluation Approach

Before the Evaluation Team began the review process, the NPS Project Manager (Michael Edwards), briefed each team member on the Project background. The Evaluation Team was informed that a target goal for completing the report was the end of June 2017. The NPS provided the Evaluation Team an initial set of emails and supporting information on March 13, 2017, and additional emails and supporting information over the review period, with the final set provided on May 25, 2017. The team conducted a comprehensive review and analysis of the emails and supporting documentation provided by the NPS. Throughout the process, the Evaluation Team met several times face-to-face and over the phone to discuss the potential concerns identified and to identify additional information needed from the NPS (such as supplementary information or email attachments). Additional information from the Solicitor's Office was provided as needed. The Evaluation Team undertook the following steps to ensure the review process was thorough and transparent:

1. First, each Evaluation Team member reviewed all of the emails and supporting documentation independently. The Evaluation Team had an initial meeting to discuss overall impressions, next steps, and items to include in the report.
2. Next, the Evaluation Team organized the emails in a logical manner and sequentially by date. The Evaluation Team developed a brief summary of the emails (including the dates and names of the correspondents) to identify the primary concerns associated with the emails and compare

how the emails coincided with the overall Project timeline. Organizing the emails in this manner enabled the Evaluation Team to identify if there was a potential nexus with specific decision-making timeframes. This also helped the Evaluation Team identify potential relationships between individual emails in an email chain. Based on the content of the emails, the team grouped the emails by topic so that they could easily be consolidated, discussed, and summarized in the report.

3. After the initial sorting and grouping of the emails, the Evaluation Team requested additional information from the NPS, including email attachments referenced in several of the subject emails that the NPS had not already provided to the Evaluation Team.
4. The Evaluation Team identified concerns from the grouped emails to formulate the basis for assessing the emails with respect to how they might have affected decision-making. The Evaluation Team considered the emails in light of the NEPA and rulemaking requirements and processes, decision-making responsibilities, Project timeline, and overall best practices with regard to communication with external organizations.
5. The Evaluation Team developed a draft report and submitted it to the NPS Natural Resource Stewardship and Science Directorate for review to ensure factual information was accurate and allow the Evaluation Team to comment on potential inaccuracies of the Project facts.
6. The Evaluation Team developed a final report and submitted it to the NPS Natural Resource Stewardship and Science Directorate.

IV. Evaluation and Analyses

The Evaluation Team identified concerns from the emails in relation to standard Federal practices and current regulations for NEPA and rulemaking procedures. The team identified specific observations in relation to these concerns. An assessment of how the observations might have or might not have influenced the decisions is provided in this section.

The Evaluation Team's review of the emails resulted in six concerns that could have potentially influenced the decision making processes. One of these six concerns was associated with one email, dated September 2006, from a NPS staff member to other NPS staff members suggesting that options for seasonal use of areas by dogs should not be considered. The Evaluation Team was concerned about the omission of an obvious element of the Project. However, this concern was dismissed because the suggestion in the email was not pursued. In addition, a public comment provided during scoping expressly requested that seasonal use be considered, and the NPS Project Team did consider and incorporate seasonal use in the alternatives. The remaining five concerns are listed below and explained further with more details as the Evaluation Team's observations.

A. Potential Concerns:

Potential Concern (PC) 1 - NPS conversations showing bias in favor of specific interest groups in the staff's use of private emails for communication during the NEPA and rulemaking processes.

PC 2 - NPS staff requesting assistance with generating and encouraging "one-sided" Project support from specific interest groups.

PC 3 - NPS staff providing information for interest groups to use:

- For meetings and correspondence with public officials,
- In public newspapers, radio, and other public venues for interest group messaging, and
- In other ways, where it is unclear if and how the information was used.

PC 4 - Interest groups providing specific updates and insights to NPS in an attempt to influence the NPS messaging efforts to the public, other groups, and public officials.

PC 5 - Interest groups providing information or commenting on Project materials used by the NPS.

B. Observations:

This section describes the Evaluation Team's general observations of the subject correspondence. To the extent possible, examples were used to substantiate the observations; however, it should be noted that not all examples were included.

Observation (PC-1, PC-2, PC-3)

At least four NPS staff used their private email accounts during the Project timeline:

- Christine Lehnertz - former GGNRA Superintendent
- Frank Dean - former GGNRA Superintendent
- Howard Levitt - former GGNRA Director of Communications and Partnerships
- Shirwin Smith - former GGNRA Management Analyst

These individuals used their private email accounts to correspond with and encourage support from outside interest groups, in particular the National Parks Conservation Association (Neil Desai), People for the Parks/Presidio (Amy Meyer), and Sierra Club (Becky Evans), among others (referred to as "Interest Groups"). The Interest Groups to which the NPS directly communicated were supportive of increased restrictions on dog-walking within the GGNRA and were therefore in support of the GGNRA Dog Management Plan and Proposed Rule. There is evidence that in the interactions between NPS and the Interest Groups, the NPS (Howard Levitt) directed all parties to keep their responses on personal email (example, email on September 7, 2014 from Howard Levitt to Frank Dean, Greg Moore, and Alex Picavet).

In an email dated July 21, 2015, the NPS (Howard Levitt) provided information to Amy Meyer to be used in a paper she needed for a meeting with Dan Bernal, the Chief of Staff for Congresswoman Pelosi. It appears that the NPS provided information to Amy Meyer for her paper to help bolster the position in favor of dog management in the GGNRA and communicate the reasons for needing dog management to select elected officials. In email correspondence from September 10-11, 2015, there is additional evidence of NPS working with the Interest Groups to attempt to generate additional public support for dog management. The NPS (Howard Levitt) stated to Amy Meyer, Neal Desai, and Becky Evans that letters of support to the NPS and Representative Pelosi would be "helpful". There was also discussion during this time between NPS personnel and the Interest Groups in developing a strategy for activating the "non-dog advocates." All of this correspondence occurred over private email between the NPS and these Interest Groups that supported more restrictive dog management policies.

Based on the information provided to the Evaluation Team, it appears that the NPS individuals were coordinating with Interest Groups only in support of further dog management in the GGNRA. In an email dated July 21, 2015, the NPS (Howard Levitt) thanks Becky Evans, Neal Desai, and Amy Meyer for being "good friends" through their activities and support for the Dog Management Rule. Although the Evaluation Team did not have access to the entire Project Administrative Record, the information provided suggests that the NPS did not correspond in the same manner with other

outside groups that may have had a different position on the proposed Dog Management Rule (i.e. groups that were not supportive of the rule); however, it is unclear how much direct contact did or did not occur with those groups through other public involvement activities.

The NPS individuals coordinated with the Interest Groups to communicate with elected officials, develop media and public involvement strategies, including talking points, and information for news articles. The NPS also coordinated with the Interest Groups on how to generate support for the proposed Dog Management Rule through the use of a neighborhood blog, and letters from dog management supporters that could be sent to the NPS and elected officials. One example of this is depicted in emails dated February 26, 2016, between Howard Levitt and Amy Meyer discussing the need to get more letters in favor of dog management restrictions into the record and how a neighborhood newsletter/blog could be used as a tool to generate these types of letters. The record also shows coordination between the NPS and the Interest Groups in formulating an Opinion-Editorial in support of dog management (reference emails between Howard Levitt, Shirwin Smith, Amy Meyer, March 24-31, 2011) after an article that was perceived as negative towards dog management was released. The record supports other instances of this type of coordination between the NPS and Interest Groups; however, in many cases it was unclear as to how the information was used or whether it was used (i.e. an Interest Group member shared information but there were no additional emails showing if or how the NPS used that information; see emails between Amy Meyer and Howard Levitt; April 12, 2016). Also, although it is clear that there was a desire to generate additional public support for greater dog management, it is unclear if such letters became part of the public record or whether the efforts generated a large volume of letters.

Observation (PC-4)

Throughout the course of the Project, the record shows that on several occasions the Interest Groups provided information to the NPS on meetings they had with elected officials (both local and national). The information they provided included items that were discussed at the meetings and elected officials' positions on dog management. For example, on February 23, 2016, Becky Evans provided insight on the County Board of Supervisors' position on dog management, suggesting that they did not oppose the Dog Management Plan. Another example is on June 9, 2016, in an email between Amy Meyer and Howard Levitt, suggesting that Congresswoman Jackie Speier's tone is much more measured compared to previously. The record also supports the fact that the NPS was coordinating with the Interest Groups on meetings with elected officials (see Observation, above), and then the Interest Groups would provide inside information on how those meetings went back to the NPS (email on July 21, 2015 between Howard Levitt, Amy Meyer, Becky Evans, and Neil Desai).

Observation (PC-5)

The record shows the use of private email accounts by NPS staff to coordinate directly with Interest Groups to obtain their input on specific NPS Project materials such as talking points for a communications plan. These materials were received in advance of their public release, in a final draft form, and the comments pertained to non-substantive aspects such as graphics and tone. The intent of the suggestions was noted as ensuring that a neutral position on the Dog Management Plan was presented. The record supports that these particular emails providing draft presentation materials, talking points, or reviews of stakeholder position statements, were between Howard Levitt and the Interest Groups and not other NPS employees. An example is in email chain between Howard Levitt and Amy Meyer on Sunday, March 27, 2011, coordinating their roles in public meetings, Howard Levitt wrote that he is the "impartial NPS spokesperson, staking ou[t] our turf and

prerogatives, but not defending our plan; you [Amy Meyer is the]: community activist and park founder.” Another example is a July 1, 2015, email from Howard Levitt (with an attachment containing factual information) to Amy Meyer, Neil Desai, and Becky Evans, stating: “Here’s something I believe you were interested in seeing. More to come. Respond only to this home email address.”

C. GGNRA Assessment

The Evaluation Team assessed the identified concerns and observations by comparing the following factors specific for the Project approach to standard and acceptable NEPA and rulemaking practices:

- Emails - Subject, Timestamp, Sender, Receivers, and Copied Individuals
- Relevant Email Attachments,
- Project Team Member Roles,
- Environmental Analyses and Studies,
- Alternatives Evaluation,
- Public Notices, Materials, and Participation, and
- Project Timeline.

Personal emails and information exchange (PC-1, PC-2, PC-3)

Federal employees conducting business and communicating Federal project information through personal email is alarming, especially when not copied and immediately placed in the project files for the administrative record. Information generated by Federal employees within their official capacity should be included in agency records when it is substantive or reflects the agency’s deliberative processes and analyses associated with their official duties.

The Evaluation Team is concerned that these emails were not expeditiously placed in the project records as part of the continuing public involvement and input process. However, of greater concern is that these personal emails from several NPS staff members communicated a message that the agency had a “one-sided view approach” in favor of stricter regulations at GGNRA. This message was not consistent with a typical deliberative process or the NPS’s process as described in their Project public notices or scoping materials provided and available on the public website or in other administrative records. In addition, information was exchanged and assistance provided between the NPS staff members and the Interest Groups with a clear intent to generate additional public support for limitations on dog-walking, and to support the Interest Groups’ missions with information to lobby public officials.

Compared to standard and accepted NEPA and rulemaking practices, a “one-sided view approach” and support for interest groups with this one-sided view is not an appropriate position for a Federal agency or staff member serving the public. As discussed above in Section II, NEPA’s purpose is to provide a process for the agency to make an informed decision on a specific need for an action. Alternatives are generated based on this need, current facts, and scientific data. Then, prior to making any final decisions, the agency evaluates the alternatives with the consideration of input from an open process with public involvement and agency coordination.

PC-1, PC-2, PC3 Assessment

The Evaluation Team considers the personal emails of the NPS staff members inappropriate and inconsistent with the purpose of either the NEPA or rulemaking processes. In reviewing the use,

influence, and overall Project development, the emails showed a clear intent to generate more support for alternatives that included more restrictive regulations, and did not offer an unbiased position for the NPS in general or with respect to the No-Action Alternative. However, even with this inappropriate use of email and correspondence with the Interest Groups, the Evaluation Team determined the following in relation to the overall validity of the NEPA and rulemaking processes conducted for GGNRA:

- The “need” for resolving conflicts between GGNRA users and developing regulations was already in the public record as early as 2000 when dog walking groups filed a lawsuit regarding Fort Funston. As stated in the Final EIS, given this type of continuing conflict “...it was clarified by the Department of Justice, U.S. Attorney, and the Department of the Interior Solicitor Offices that the voice control policy then in effect at Fort Funston and other locations in the park was contrary to NPS regulations.” Therefore, in addition to other conflicts through 2005, the NPS acknowledged the sincere need to clarify dog management requirements at GGNRA.
- The Project has an extensive, publicly available, study period from 2002 to present. The emails occurred between 2006 and 2016, with all but one reviewed occurring between 2011 and 2016.
- The staff member (Howard Levitt) initiating and participating in most of the concerning dialogue and circulating information was a NPS communications program manager. Howard Levitt was not a NPS technical staff member participating in the development of alternatives with objective scientific data used in the evaluation process or a decision-maker in the NEPA or rulemaking process.
- The No-Action Alternative was carried through the process, but with the court order for regulations and NPS mission, this alternative was not consistent with the factual needs presented by the NPS in the planning documents, public notices, public meetings, and public documents.
- The emails, although including harsh unrelated editorials, discussed and exchanged known public, or soon to be public, information such as historical GGNRA facts, openly advertised “purpose and need”, materials used in public meetings and available on the Project website, and existing conditions of the GGNRA.
- There were several emails referencing materials prepared by, or with, the Interest Groups where it was unclear if and how this information may have been used for the Project. These materials did not appear to be related to technical information used in the alternatives evaluation or change the overall NPS messaging to the public.
- The additional support for more restrictive regulations that the inappropriate communications may have generated, from both general public comments and public officials, appears to have been also submitted through official public forums open to the entire public (such as the comment forms, letters, and the website) that were included in the Project record.

Even with any additional support generated by the emails, the Preferred Alternative identified in the Final EIS appears to reflect all the input received on the Project. For example, the Project Team recommended a plan with a minor change from the Supplemental EIS for more dog accessibility that is inconsistent with the desired direction of the email exchanges.

Interest Groups providing information to influence NPS Project messaging (PC-4)

Federal agencies are responsible for generating and providing factual, objective information during the development of proposed rules and in the NEPA process. The Federal agency staff, as agents of the public, should not introduce personal opinions or opinions generated from their personal relationships or affiliation with other groups or associations into their Federal employee role or the implementation of their responsibilities.

The Evaluation Team is concerned that the personal email conversations could have potentially influenced, changed, or biased the messaging from the NPS to the public and public officials. The emails inappropriately expressed gratitude from the NPS staff members, but more important is for the Evaluation Team to assess if the information provided or supplemented by the Interest Groups was used in a way that was inconsistent with the needs of the Project or were inconsistent with materials provided and available to the public. Most importantly, did this “off to the side” coordination and information from the Interest Groups affect the NPS Project Team’s objective review and evaluation of the alternatives?

Compared to standard and accepted NEPA and rulemaking practices, a separate effort of coordination and/or personal participation in the public involvement process by a Federal employee is clearly inappropriate and inconsistent with the intent of an open deliberative process. Typical practice is to develop a Public Involvement Plan that is centered on the development of the Project, with all messaging consistent and concurrently provided to all stakeholders. The information is updated, revised, and added to throughout the process based on many factors, such as technical data, studies, and input provided through public participation.

PC4 Assessment

The email exchange and resulting information shared between the staff and Interest Groups was incorrectly kept separate, in an “off to the side” process, or worse, by appearing to operate as an extension of staff. If focusing only on these specific emails, which include blatant encouragement and support from NPS, and not the “whole” public involvement process, these emails definitely presented a biased focus in relation to specific areas of the GGNRA. However, the Evaluation Team notes that there was an extensive Public Involvement Plan implemented, which included notices, newsletters, public workshops, committee groups, and extended document comment periods.

These “all inclusive” efforts led by the NPS Project Team provided a cross section of comments related specifically to the studies, public needs, park preservation, and included agency coordination. It is undetermined if the messaging resulting from the Interest Groups influenced the type of materials or tone of the presentations. However, in relation to the openly publicized need for the Project and the overall input received, the Evaluation Team does not believe that this information exchange and resulting materials influenced the alternative development and evaluation to an extent that changed the already supported need, stakeholder input, and selection of the Preferred Alternative.

Interest Groups providing information for NPS use (PC-5)

The concern with the Interest Groups providing information to the NPS as supplemental Project information is not the major issue. The issue is how this information was unofficially submitted and coordinated jointly, in some cases prior to public availability.

In typical NEPA and rulemaking processes, a Federal agency prepares materials based on

information gathered from many sources, which may include the public or other stakeholders. Information provided in this manner is documented with a source reference. It is not uncommon to have project specific steering committees or task forces with special expertise to assist in obtaining data or the development of information. However, these types of committees and task forces are again part of the overall NEPA process, which means the members of the committee and its function are disclosed and meetings and/or information provided are open and documented for the Project Record.

PC-5 Assessment

The emails communicated a request for additional historical GGNRA data and comments on materials that were going to be used in briefings with public officials or at public meetings. This personal contact in obtaining information is an inappropriate approach and not acceptable for Federal agency staff. The Evaluation Team noted that the information provided by the Interest Groups was information about current and past history of the GGNRA and its use. This information was not used in relation to the comparison of alternatives or in evaluating the alternatives. Therefore, it is unlikely that this input from the Interest Groups changed the course of the actual Project studies or influenced the decisions associated with the Preferred Alternative.

V. Conclusion and Recommendations

The development of the rule and NEPA process occurred over a long period of time. Many variables, people, and influences beyond the emails in question, particularly scientific analyses and substantive comments, are reflected in the decisions made in the Supplemental EIS and Final EIS. The substantive technical analyses and alternatives evaluation supporting the Preferred Alternative identification were not part of the email discussions with non-NPS parties. The Proposed Rule issued in February 2016 indicates there were five (5) primary authors of the proposed rule, and except for one former employee (Shirwin Smith), they were not included on the identified emails of concern. The GGNRA Director of Communications and Partnerships (Howard Levitt) and the Interest Groups led these email exchanges and copied other NPS staff. The GGNRA Director of Communications and Partnerships was not part of the rule development or technical staff providing information supporting the decision.

Changes made to the proposed dog accessibility in the Preferred Alternative in the Supplemental EIS and Final EIS increase, supporting a decision that moves in a direction against the positions taken in these emails. It is unclear from the emails, and unknown to what extent, if any, additional public comment or stakeholder input was received as a result of the coordination attempting to build support for the position of the individuals involved. However from the experience of the Evaluation Team, the position was represented in the decision-making processes and does not appear to be disproportionate in influence in comparison to the overall Public Involvement Plan implemented for the Project. Overall, the inappropriate actions of Mr. Levitt, as an interested individual party and in his participation in the public process aspect of the NEPA and rulemaking processes, were not inherently fundamental to the analysis, information, and decision-making processes. Although not as directly involved, there were other NPS employees included on some of these emails too. The emails reviewed did not show evidence that they resulted in direct impact to the NEPA or rulemaking processes. However, the fact that these emails occurred raises the potential perception of impartiality and is troubling. The Evaluation Team recommends that NPS take steps to prevent these circumstances from occurring in the future. Nonetheless, the Evaluation Team is knowledgeable of Federal government-wide NEPA and rulemaking procedures and finds that the emails in question and potential concerns to the processes do not reflect undue influence that affected the fundamental Project decisions.

Currently, the Final Rule for the Project is pending. A Final EIS was published in December 2016. Shortly thereafter the NPS leadership became aware of the use of personal emails and determined that this evaluation was needed to assess the potential impact of these emails on the GGNRA Dog Management Plan decision-making processes. This report fulfills this evaluation for the NPS Natural Resource Stewardship and Science Directorate.

The Evaluation Team commends the NPS for initiating this peer review prior to making the final decision for the GGNRA Dog Management Plan. The Evaluation Team also noted that the NPS staff that were involved in the concerning emails are from staff that no longer work on the Project. While the Evaluation Team concludes that the personal emails overall did not influence the ultimate decision, we do recommend that the NPS Project Team prepare a Decision Document that clearly outlines all the elements that were determining factors in the recommended decision. We advise that any Record of Decision and Final Rule for the GGNRA-Dog Management Plan be publicly available for a minimum 30-day period prior to the effective date of a Final Rule. This 30-day period will allow for any additional information to be provided to the NPS prior to implementing a GGNRA-Dog Management Plan.