



Public Employees for Environmental Responsibility

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November 6, 2019

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U.S. Department of Agriculture
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Re: e-bike policies and violations of the Federal Advisory Committee Act

Dear Sirs,

This is a request that you direct your Departments' staff to halt all participation in the "E-bike Partner & Agency Group," which has been convened for multiple meetings by the Department of the Interior, because the Group violates the Federal Advisory Committee Act ("FACA"), (5 U.S.C. App.). Your bureau also should withdraw all policies that it has adopted connected with participation in this non-FACA compliant advisory committee.

On Aug. 29, 2019, Secretary of the Interior Bernhardt issued Secretarial Order number 3376, entitled "Increasing Recreational Opportunities through the use of Electric Bikes". The heart of his Order directs Interior agencies that: "E-bikes shall be allowed where other types of bicycles are allowed". (Sec. 4.b.). The next day, on Aug. 30, then-Deputy Director of the National Park Service (NPS) P. Daniel Smith issued a new Policy Memorandum that directed all Park Superintendents to immediately treat motorized e-bikes the same as traditional bicycles and to regulate them in the same manner, notwithstanding the fact that e-bikes fall under the NPS definition of "motor vehicle".

These actions of Secretary Bernhardt and former Deputy NPS Director Smith to approve e-bike use without first amending the existing NPS regulations defining and governing bicycle and motor vehicle use violated the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* Further, their actions violated the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, because they failed to prepare any environmental assessment of their actions.

Further, the Department and the NPS violated FACA when they promulgated their new e-bike policies. FACA governs the operation of federal advisory committees and emphasizes public involvement through open meetings and reporting. It defines “advisory committee” as “any committee, board, commission, council, conference, panel, task force, or other similar group...which is...(C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations....” 5 U.S.C. App. § 3(2) (in pertinent part). Except in certain statutorily defined circumstances, all FACA committee meetings must be announced in the Federal Register and open to the public. *Id.* at § 10. Reports, transcripts, working papers, and other materials made available to or prepared for or by the committees must be made available to the public. *Id.*

The actions of the Department and the NPS flowed from a fundamental violation of FACA. Beginning in October of 2018 or earlier, an advisory committee was convened by the Department called the “E-bike Partner & Agency Group”. The Group was hosted in person at the Main Interior Building in Washington, DC, and via conference call. It met at least quarterly during the time that Secretary’s Order and the Smith Directive on e-bikes were developed. The most recent known Group meeting was Oct. 10, 2019. Participants included numerous Federal agency representatives and private industry representatives who advocated, advised, and recommended (successfully) for e-bike deregulation. (A CC. list of all known Federal participants is provided below; it is not necessarily exhaustive.) The private industry advocacy groups included, but were not limited to, People for Bikes (multiple representatives), Adventure Cycling (multiple representatives), and the International Mountain Biking Association. (The many private participants are not listed below.)

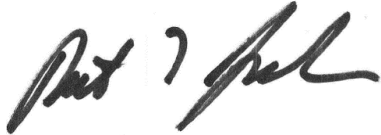
The E-bike Partner & Agency Group meetings were neither open to other participants nor announced in the Federal Register. The Group was not representative of the range of private or public interests affected by e-bike use on Interior lands. PEER received no information about the existence of this hidden Group before October of 2019. Had PEER known of this Group it would have objected to its meeting.

The Department of the Interior and the NPS hosted and repeatedly engaged in this non-FACA compliant advisory committee and obtained its advice and recommendations. It very likely led to the issuance of Defendant Bernhardt’s Order and the Smith Policy Memorandum approving e-bikes.

Based on the above FACA violations, PEER urges all of the bureaus and officials involved to halt their participation in the E-bike Partner & Agency Group and withdraw any e-bike

policies developed in connection with the Group. Failure to do so may lead to legal action. Please contact me with your response.

Sincerely,



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