



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY • PACIFIC

March 22, 2022

Director Chuck Sams
National Park Service
1201 Eye Street NW
Washington, DC 20240

Email: Director@nps.gov

Dear Director Sams:

I am writing, on behalf of Public Employees for Environmental Responsibility (PEER), to alert you to policy changes made during the final days of the Trump administration that removes most public notice and consultation in national park decisions to approve new or expanded wireless telecommunication facilities, such as cell towers.

We believe these new National Park Service (NPS) policy changes are contrary to the views you have expressed about public consultation in park management decisions. We also believe these changes are contrary to the spirit of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

Notably, the decisions impacted by these changes facilitate commercial use of national park lands and resources. These are precisely the types of decisions that deserve more public scrutiny, not less.

To that end, we ask that you restore –

1. The public's "opportunity to participate fully and comment on applications for right-of-way permits to construct WTF sites on park lands" (this language was stricken from prior NPS policy);
2. Public posting of information such as signal strength and coverage as well as information about the visibility and location of such facilities at the earliest possible stage; and
3. The ability of the public to appeal these right of way decisions on the same basis as the applicant.

In addition, we would request that you take steps to ensure the public's right to be kept informed (and comment on) all applications for new, modified, or expanded cellular facilities in a national park.

It is both ironic and significant that these recent policy changes to remove these public notice and participation requirements were themselves undertaken without public notice or opportunity to comment.

The genesis of these recent changes also merits some examination. For the years prior to 2021, the NPS policy governing the processing of wireless telecommunications facility applications was spelled out in Reference Manual 53: Special Park Uses: Wireless Telecommunication Facilities (Appendix 5, Exhibit 6, Pages A5-43 to A5-61).

In 2017, PEER filed a complaint with the Interior Office of Inspector General (OIG) alleging, among other things, widespread noncompliance by national parks with the requirements of law, such as the National Environmental Policy Act (NEPA) and NPS policy, principally RM-53.

After investigating PEER's complaint, the OIG issued a report ("The NPS Needs To Improve Management of its Commercial Right-of-Way Program" No. 2018-WR-011) that validated our concerns, concluding –

“We also found that NPS needed to improve its management of the commercial ROW program to better comply with applicable laws, regulations, and policies, primarily RM-53... As a result, parks are not in compliance with RM-53 and Federal land may not be protected from environmental impacts.”

One of the OIG's principal recommendation was that NPS “Develop an action plan to ensure compliance with RM-53...” In fact, NPS “concurred” with the OIG's recommendations and wrote:

“We take these matters seriously and are working to ensure that commercial cell facilities in national parks are managed correctly and in accordance with NPS policy and pertinent regulations.”

Beginning in April 2020, NPS officials began developing new procedures in this area, ultimately rescinding RM-53 and replacing it with a new policy, titled RM-53B. This new policy direction took place without public notice or involvement. These actions were also directly contrary to the thrust of the OIG recommendation.

The new RM-53B represents an unprecedented exclusion of public involvement in national park decision-making, especially as it relates to approval of commercial use of park lands and resources.

The new RM-53B now –

- Makes public notice and involvement in approval of new cell towers or other wireless facilities discretionary, rescinding prior requirements for public notice as soon as applications were received;
- Removes the requirements that key material, such as signal strength and visibility impacts, are no longer required in these right of way applications. This will make this type of basic information about the nature and impacts of new facilities largely unavailable to the public and even to the park superintendent, unless he or she demands it in the approval process;

- Excludes the public from Administrative Appeals. Only the applicant may now appeal a decision to grant or deny a right of way;
- Stipulates that modifications to existing permits, such as expansions, need not require additional NEPA. This means that limited cellular systems may be able to incrementally expand without any public notice or review; and
- Allows parks to accept applications not just from Federal Communications Commission but also wi-fi and tower companies. This means that start-up companies or other enterprises that may be less reliable will be able to obtain park rights of way.

We would urge your critical review of all of these changes. However, we especially commend your involvement in restoring some measure of transparency and public participation in NPS handling of applications by commercial enterprises to occupy park lands and use park resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Ruch", written in a cursive style.

Jeff Ruch
PEER Pacific Director