



Investigative Report

*On Allegations that the National Park Service Improperly Allowed
Daniel Snyder to Cut Trees on Government Land*



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

JAN 19 2006

Memorandum

To: P. Lynn Scarlett
Deputy Secretary

From: Earl E. Devaney
Inspector General

Subject: Administrative Investigation

Re: Allegations of Improper Tree Removal by Daniel Snyder

My office recently concluded an investigation regarding an allegation that the National Park Service (NPS) improperly allowed Washington Redskins owner, Daniel Snyder, to cut native trees on land held in a scenic easement at Chesapeake and Ohio National Historic Park (C&O NHP).

Our investigation revealed that in the last 30 years, since acquiring the C&O NHP easements, NPS has been consistent in its interpretation of scenic easement terms and conditions in response to landowner questions and requests regarding tree cutting. No modifications had ever been made to the terms and conditions of the 194 scenic easements along the C&O NHP, until NPS granted permission to Mr. Snyder to cut down native trees in 2004.

Our investigation determined that NPS failed to follow any of its established policies and procedures outlined in the *NPS Director's Handbook*, and even disregarded the recommendations of their own Horticulture Advisory and Review Committee, regarding the process in which a property owner on a NPS scenic easement can cut vegetation above the allowable limit. Specifically, NPS National Capital Region officials, and C&O NHP employees failed to initiate the requisite environmental assessment, as required by NPS guidance, when instituting changes to an easement agreement. In addition, NPS did not complete the required paperwork detailing the reasons for granting Mr. Snyder exclusions to a Special Use Permit, which allowed him to cut vegetation beyond the allowable limit.

Mr. Snyder and his attorneys initiated a 3-year, sporadic negotiation process beginning in the fall 2001 with Superintendent Doug Faris, continuing through 2004 with Superintendent Kevin Brandt and former Special Assistant to the NPS Director P. Daniel Smith (currently Colonial NHP Superintendent). During the negotiations, in a January 2002 letter from Mr. Snyder's attorney to Superintendent Faris, Snyder offered \$25,000 as mitigation for his scenic easement variance request. Faris, in a subsequent letter,

stated NPS could not accept a cash contribution as mitigation. After Faris retired, the new superintendent (Brandt) suddenly agreed to allow Snyder to cut all of the vegetation, through a Special Use Permit, in a part of the scenic easement area on his property in the summer and fall of 2004.

Our investigation also revealed that the unprecedented decision to allow Mr. Snyder to cut on the easement resulted from the undue influence of P. Daniel Smith. Smith inappropriately used his position to apply pressure and circumvent NPS procedures, on Snyder's behalf, through his personal communications with park officials and Mr. Snyder and his representatives. When questioned about his involvement, Smith claimed that NPS Director Fran Mainella requested he become involved in the Snyder issue; however, Mainella adamantly denied Smith's assertion and claimed that she first became aware of the Snyder issue when she read about it in *The Washington Post*. In addition to completely contradicting Director Mainella's explanation, the details of Smith's account could not be corroborated. Also, OIG agents found Smith contradicted himself during his two, separate interviews. The contrasting accounts provided by these two senior level officials, Smith and Mainella, prolonged the OIG investigation and unnecessarily cost the government additional time and monies.

NPS guidance requires that C&O NHP should have notified the local jurisdiction, Montgomery County, Maryland, of their agreement with Mr. Snyder; instead the county learned of Snyder's tree cutting through citizen complaints. In December 2004, Montgomery County cited Mr. Snyder for violating the county forestation code, Chapter 22A-4, and fined him \$1,000. The following year, in August 2005, Mr. Snyder reached a settlement with the Maryland National Capital Parks and Planning Commission and was required to implement a restoration planting plan that included reforestation of 1.3 acres of land cleared by Mr. Snyder, enhanced planting outside the cleared area, the purchase of the equivalent of three acres of land to be deposited in a forest conservation bank (minimum to be spent-\$37,000), permanent protection of existing forest, and the posting of a \$45,000 bond for two years of maintenance costs.

The U.S. Attorney's office in Washington, DC, declined to prosecute former Special Assistant Smith for providing false statements to investigators.

The attached investigative report is provided for your review and whatever administrative action you deem appropriate for NHP Superintendents Brandt and Smith. Please return the investigative file along with documentation to the Program Integrity Division within **90** days. Should you have any questions, or wish to further discuss the results of our investigation, please contact me at (202) 208-5745.

Attachment

Results in Brief

This investigation was initiated based on an Office of Inspector General (OIG) hotline complaint by an individual who alleged that Kevin Brandt, Superintendent, Ohio Canal National Historical Park (C&O NHP), National Park Service (NPS), Hagerstown, MD, improperly allowed Washington Redskins owner, Daniel Snyder, to cut native trees on NPS land held in a scenic easement.

Our investigation revealed that NPS did not follow its own policies and procedures regarding the process by which a property owner on an NPS scenic easement can cut vegetation above the allowable limit. Our investigation determined that Superintendent Brandt, NPS National Capital Region officials, and C&O NHP employees failed to initiate an environmental assessment, required by the NPS Director's Handbook, when instituting changes to an easement agreement.

NPS, while granting Mr. Snyder exclusions through a Special Use Permit (SUP) to cut vegetation above the allowable limit, did not complete the paperwork necessary to detail the reasons for granting the exclusions as required by the NPS Director's Handbook.

Our investigation determined that P. Daniel Smith, former Special Assistant to the NPS Director, unduly influenced the decision to grant Snyder permission to cut the vegetation on the easement by inserting himself into the process through personal communications with Mr. Snyder, his representatives, and C&O NHP officials. Smith asserted, in two interviews with investigators, that he became involved in the tree-cutting issue at the request of NPS Director Fran Mainella. Mainella and several other witnesses denied Smith's assertion.

This investigation was declined for prosecution by the United States Attorney's Office, Washington, DC.

Background

In the early 1970s, NPS acquired 194 scenic easements at C&O NHP consisting of 1349 acres of federal land and land interests within the park. These easements were acquired to provide protective buffers, to limit development, to provide a natural view-shed and visual protections, and to better utilize NPS land acquisition funds.

Over several decades since the easements were acquired, NPS and park staffs have been consistent in their interpretation of scenic easement terms and conditions in response to landowner questions and requests. As of the summer of 2004, no modifications had ever been made to the terms and conditions of the 194 scenic easements along the C&O NHP. Any allowance for, or exceptions to, scenic easement terms and conditions can only be made by modifying scenic easements terms through land protection strategies, including memorialization through recordable documentation or by exceptions granted by the Secretary of the Interior or designate.

In recent years, due to the Washington Metro area land values skyrocketing and increased subdivision development, property owners subject to the scenic easements terms and conditions have subsequently made an increased number of requests to cut on the land to improve their view of the Potomac River.

The scenic easement involved in this investigation was originally acquired from a couple on October 1, 1974. Daniel Snyder is an assignee to this easement, as a result of his purchase of the property in 2001, which restricts certain activities over a described area of his property to protect resource and aesthetic values.

In correspondence dated October 19, 2001, NPS was informed that Mr. Snyder was planning to immediately remove all vegetation 6 inches diameter breast height (dbh) and under, prune trees within the scenic easement and proposed to alter the height of his main house by adding a ballroom (Montgomery County through a zoning ordinance, and NPS through the scenic easement agreement had to agree on the proposed roofline/building elevation changes). This correspondence initiated a 3-year, on again, off again, negotiation process between Snyder and NPS, culminating in Snyder cutting all of the vegetation in a part of the scenic easement area on his property in the summer and fall of 2004.

Details of Investigation

The hotline caller alleged that Kevin Brandt, Superintendent of the C&O Canal NHP, allowed Washington Redskins owner Daniel Snyder to cut native trees on NPS lands held in a scenic easement, in violation of law and NPS policy.

According to the hotline complaint to the Department of the Interior (DOI) OIG, Daniel Snyder allegedly contacted the Secretary of the Interior (Secretary) and offered to make several hundreds of thousands of dollars available for NPS projects in exchange for allowing him to remove trees on the NPS scenic easement land located on Snyder's property. The complainant alleged that the tree removal was conducted to improve and provide an unobstructed view of the Potomac River from Snyder's residence. The complainant stated that the Secretary allegedly notified the NPS Director, who in turn notified the NCR Regional Director, who then notified Brandt, and finally, Brandt directed the C&O NHP Lands Coordinator to negotiate the deal.

According to the complainant, NPS has had a policy of "no compromise" regarding view-shed improvement. The complainant stated that the easement agreement allowed Snyder to cut trees under 6 inches dbh and remove diseased or dead trees for reasons of safety. The complainant said that Snyder's main issue was the scenic improvement of the property (an unobstructed view of the river from his residence). The complainant also said the primary issue in the past for NPS was land encroachment by landowners and its impact on park resources (personal gain versus detriment of park resources).

The complainant advised that NPS received a neighbor complaint in June 2004 that Snyder was cutting "small" trees on the easement. The complainant stated that NPS verified that the cuttings were legal (tree cutting below the 6-inch-dbh regulation) within the easement agreement.

The complainant related that Brandt had been negotiating with Snyder's attorneys regarding a new easement agreement that would allow Snyder to cut all non-native tree species, and underbrush, and remove diseased, dead, injured or hazardous trees from the easement. Snyder would replace the trees with native species and be allowed to keep the tree height cropped to facilitate an unobstructed view of the river from his residence.

The complainant commented that this proposed agreement would be inconsistent with previous NPS policy and fail to maintain the protective buffer between landowner properties and the river. The complainant said Brandt was well aware of Snyder's previous efforts to forge a new easement agreement,

as he was the assistant superintendent for 8 years at the C&O NHP prior to becoming superintendent in early 2004. The complainant stated that Brandt did not have the authority to negotiate a new easement agreement and land exchange involving park resources with Snyder. The complainant cited Chapter 1, Section 4.7 of the *NPS Management Policies Manual* that states, "Impairment of park resources is not permissible under the law, unless directly and specifically authorized by Congress."

According to the complainant, the C&O NHP Lands Coordinator was the drafter of the proposed new easement language regarding Snyder. The complainant advised that Brandt charged the Lands Coordinator to craft the best deal possible for NPS regarding a new easement agreement. The complainant stated that the Lands Coordinator said he felt the superintendent had reversed previous NPS policy regarding the handling of scenic easements.

The complainant advised that when Snyder completed the first cut in early summer 2004, the easement negotiations accelerated and, as the complainant observed, Brandt entered into a policy change by agreeing to allow Snyder to cut trees over 6 inches dbh and into a trade-off of park resources through a land exchange agreement.

The complainant advised that NPS does not have exclusive legal rights regarding the scenic easement and that Montgomery County, MD, officials are investigating Snyder for violating the county forest conservation law.

NPS' Departure from Previous Policies and Procedures

The National Environmental Policy Act (NEPA) was passed by Congress in 1969 and took effect on January 1, 1970. This legislation established this country's environmental policies, including the goal of achieving productive harmony between human beings and the physical environment for present and future generations. It provided the tools to carry out these goals by mandating that every federal agency prepare an in-depth study of the impacts of "major federal actions having a significant effect on the environment" and alternatives to those actions, and requiring that each agency make that information an integral part of its decisions. NEPA also requires that agencies make a diligent effort to involve the interested and affected public before they make decisions affecting the environment.

The *NPS Director's Handbook, Order Number 12 (DO-12)*, derives in whole or in part from the Interior NEPA guidelines. The processes described in the handbook are binding on all NPS personnel. Under the terms of the National Parks Omnibus Management Act of 1998, the "Secretary shall take such measures as are necessary to assure the full and proper utilization of the results of scientific study for park management decisions. In each case in which an action undertaken by the National Park Service may cause a significant adverse effect on a park resource, the administrative record shall reflect the manner in which unit resource studies have been considered." The development of alternatives, analysis of impacts, and incorporation of the best available information, coupled with identification of environmentally preferable courses of action as called for in this handbook, are one set of steps required in meeting this obligation to the public.

NEPA requires two elements to be in place to achieve its stated intent. One is the requirement that all agencies make a careful, complete, and analytic study of the impacts of any proposal that has the potential to affect the environment, and alternatives to that proposal, well before any decisions are made. The other is the mandate that agencies be diligent in involving any interested or affected members of the public in the NEPA process.

Key features of the analysis are made available to the public in one of three types of NEPA documents, depending on the degree of impact to the environment and the process outlined in DO-12, Chapter 2:

1. Generally, if the proposal clearly has no potential for measurable environmental impact, it is categorically excluded (DO-12, Chapter 3) and a short 1- or 2- page notice is prepared (category exclusion form).
2. If it has the potential for significant environmental impact, an environmental impact statement (EIS) is required if the proposed action would have a measurable impact on the environment.
3. If it is unclear whether the action has the potential for a significant impact, an environmental assessment (EA) is the appropriate document to prepare (DO-12, Chapter 5). If the EA shows the action may have a significant effect, an EIS is also required.

As of the summer of 2004, there had not been any modifications of the scenic easements along the C&O NHP. NPS and C&O NHP officials circumvented the NEPA process by citing category exclusions in DO-12, Chapter 3. NPS failed, however, to document its contention that there was no potential for measurable environmental impact by not filing a category exclusion form. The form requires a brief description and identification of the category used in excluding the action from further NEPA analysis.

The Associate Regional Director for the National Capital Region, NPS, pointed out that in 1971, he wrote the original scenic easement agreements with local landowners along the C&O Canal for NPS. He felt that he was naïve in allowing vegetation cuts of anything under 6 inches dbh into the original agreements and would change it if he could. He related that NPS wanted to do a land exchange to resolve Snyder's tree-cutting issue, which is a two-step process. The first step is the exchange agreement (signed-off by Snyder and NPS in October 2004); the second step is to get a permit issued, which in Snyder's case happened 2 weeks later (November 2004). This type of land agreement is an exchange of land or interests of real property between the United States and an owner of nonfederal land within a unit of the National Park System.

According to the C&O NHP Lands Coordinator, he wrote and assisted in negotiating the land exchange agreement between NPS, Daniel Snyder, and his attorneys. The Lands Coordinator also wrote the SUP authorizing Snyder to cut trees on the scenic easement above 6 inches dbh in November 2004, and to cut and clear non-native and native trees that were diseased, dead, injured, or hazardous. The Lands Coordinator informed investigators that everything he wrote was reviewed and approved by an Attorney-Advisor in the Office of the Solicitor.

The C&O NHP Lands Coordinator advised that Snyder's attorneys gave repeated assurances to him that they were in compliance with Montgomery County, MD, laws governing the cutting of vegetation and trees on scenic easements. The Lands Coordinator took in good faith what Snyder's attorneys were telling him regarding approvals by Montgomery County and did not verify with the county that Snyder had secured the necessary approvals to proceed with the proposed cutting.

The C&O NHP Lands Coordinator advised that Snyder had been negotiating with NPS for several years to allow him to cut the vegetation on the scenic easement. The Lands Coordinator stated that he met

with Snyder in April 2004 and discussed a proposed land exchange agreement, which would take up to a year to complete. He commented that Snyder was not happy with that timetable.

According to the Lands Coordinator, he consulted with NPS' regional horticulturist and reviewed all areas of possible concern for resource impact. He stated that the agreement underwent legal review. However, he admitted that NPS did not follow the document procedure set forth in the *NPS Director's Handbook*, DO-12, Chapter 3, Category Exclusions. The Lands Coordinator advised that the park did not produce a category exclusion form or an environmental screening form, both required if using exclusions under section 3.4, which the park cited on the Snyder Special Use Permit. These forms are part of an internal scoping process and apply if section 3.4 exclusions are used.

The NPS Chief Horticulturist, in a memorandum dated July 8, 2004, commented that after the June 2004 removal of the 6-inch dbh and under vegetation on the Snyder easement, the visual protection and natural functioning of the plant community were severely compromised and increased the potential for exotic invasion and erosion. The NPS Chief Horticulturist further observed that the 6-inch dbh or less vegetation may result in a change in topography or disturbance of natural physical features that is "prohibited in the terms and conditions of the easement."

The NPS Chief Horticulturist estimated that in excess of 50 exotic trees over 6 inches dbh within the easement were proposed for removal. He cautioned that even though the trees are recognized as invasive exotics by NPS, they "contribute to the visual protection desired in acquiring the scenic easement." He said that unfortunately, the screening effect provided by the exotics has become even greater as a consequence of the extensive vegetation removal recently conducted by the owner (Snyder).

Superintendent Kevin Brandt advised that he had been the Deputy Superintendent at the C&O NHP for 8 years under the former Superintendent of the C&O NHP. Brandt became the acting superintendent in September 2003, following the retirement of the former Superintendent. While the deputy, Brandt said the former Superintendent did not involve him in the Snyder negotiations. After a lull in the negotiations between Snyder and NPS from 2002 through 2003, Brandt stated discussions were resumed in the late winter of 2004. Brandt advised that he sent a letter to Snyder's attorney in February 2004 regarding the easement and reiterated the existing NPS policy of no cutting.

Brandt commented that two employees from the National Trails Land Office, NPS, Martinsburg, WV, had been in contact with Snyder's representatives before Brandt's February 2004 letter was sent regarding an offer setting conditions for a land exchange agreement. Brandt related that the C&O NHP Lands Coordinator met with Snyder to discuss the land exchange in April 2004 and told Snyder that the timeframe for completing such an exchange would be approximately one year.

Brandt related that he met with the C&O NHP Lands Coordinator and Snyder at Snyder's residence in June 2004. Brandt stated that Snyder's Attorney was also present and told him they had Montgomery County approval for further clearing of the remaining vegetation. Brandt admitted that he was aware that the county had a say in the decision to cut and remove vegetation from the Snyder property but did not follow up with Maryland officials. Brandt claimed the responsibility lay with the Snyder people to satisfy Maryland authorities regarding approvals.

Brandt admitted that he did not follow NPS administrative policy in producing the necessary paperwork to document the creation of a new easement agreement and the issuance of the SUP for the Snyder property. Brandt felt that the category exclusions cited in the SUP dealt with resource

management and did not require an EA or EIS. Brandt acknowledged that this is the first permit issued for cutting on a scenic easement and was advised by the Associate Regional Director for the National Capital Region, NPS, that these types of land exchanges do not require an EA. Brandt also knew that he should have provided a justification statement for the proposed land exchange indicating that all exchange criteria have been considered as directed by the NPS guidelines on Exchanges, Part XV, Chapter 3, section 3.2.

Brandt claimed that in December 2004, he briefed NPS Director Fran Mainella and the Regional Director for the National Capital Region after Snyder cut the remaining exotic and native trees on the easement in November 2004. Brandt stated there were subsequent conversations between himself and Director Mainella regarding Snyder.

According to the Regional Director for the National Capital Region, category exclusions must be signed off on by the regional director and this was not done. He pointed out that removing exotics are the “heart” of NPS’ mission and that their removal is “secondary to our nature.” He offered this not as an excuse, but as an explanation for why the required paperwork and procedures for this type of exchange were not followed.

Brandt told the Regional Director for the National Capital Region that Snyder’s attorneys told him that Montgomery County had given Snyder approval for clearing the easement, but that there was no follow-up with Montgomery County to see if this was true. The Regional Director admitted that the follow-up should have been done by Brandt instead of taking the word of Snyder’s attorneys. The Regional Director said that he will decide what action to take after learning what action Montgomery County takes and admitted that maybe they should “re-look the agreement” with Snyder.

According to the NPS Associate Regional Director for the National Capital Region, NPS used categorical exclusions derived from the *NPS Director’s Handbook* for the permit and stipulated that Snyder had to pay for an EA. The Associate Regional Director advised Superintendent Brandt that an EA was not needed initially because the growth to be cut on Snyder’s property was primarily exotic trees.

AGENT’S NOTE: It was pointed out to the NPS Associate Regional Director for the National Capital Region that the NPS Director’s Handbook advises that an EA needs to be done if two categorical exceptions are given and, in this case, three categorical exceptions were given. The Associate Regional Director agreed that this was correct and said that he based his opinion on practical experience. He stated that he “sensed” no disagreement from either side in “moving this along.”

According to Brandt, the NPS Associate Regional Director for the National Capital Region told him that an SUP did not need an EA but that the land exchange did require one, and he acted using the Associate Regional Director’s guidance. The land exchange agreement stipulated, “An EA was to be conducted and paid by Snyder as part of the land exchange agreement with NPS [Page 3, #6].” The agreement did not specify when the EA was to be conducted, before Snyder cut, or after. There is no mention in the SUP regarding an EA.

However, the NPS Associate Regional Director’s comments are contradicted by the Chief Horticulturist’s memorandum dated July 8, 2004, regarding the Snyder scenic easement, in which the Chief Horticulturist states, “input (for the memo) was received from [the Chief, Natural Resources and Science], [the NPS Associate Regional Director for the National Capital Region], [the Chief, Land Resources Program] and [the C&O NHP Lands Coordinator].” The NPS team made observations,

commented, and made recommendations to Superintendent Brandt regarding the Snyder easement in the summer of 2004.

In the memo, the NPS team recommended:

...the area cleared within the addressed 200-foot zone of the easement must remain natural to provide seamless continuity with the surrounding vegetation to achieve the screening intent of the easement. It is our professional determination that the best approach to restore the site and achieve this intent within the 200-foot easement would be to allow natural succession to occur by permitting all native vegetation to grow to its full potential and to remove exotic species as they compete with native plants. Deliberate planting in this area will only add to the recent disturbance and increase the potential for erosion and exotic plant invasion. There is sufficient seed source in the surrounding natural areas to sustain the native plant community without additional planting.

AGENT'S NOTE: Snyder planted over 600 seedlings after the November 2004 cut of vegetation 6-inch dbh and over. Snyder, in addition to cutting all exotic species within the 200-foot easement, cut all of the native species, whether healthy, diseased, injured or considered hazardous.

The NPS team also recommended a "Clarifying Attachment" to the existing easement that clearly defines the terms and conditions under which the easement will be maintained. The attachment should be in the form of a legal document to be signed by both parties (Snyder/NPS) and recorded in the County Land Records. In the memo, the Chief Horticulturist used the phrase "in the timeframe the owner has requested." The C&O NHP Lands Coordinator had also commented that after his April 2004 meeting with Snyder, Snyder had expressed unhappiness regarding the timetable for the completion of a land exchange agreement.

An Attorney-Advisor has been with the Solicitor's office in DOI for 10 years and has worked extensively with NPS on land exchanges within the last 6 years. The Attorney-Advisor normally reviews land exchanges to check the language, definitions used, and statutes cited for proper use. The Attorney-Advisor does not recall ever working on a scenic easement issue.

The Attorney-Advisor said they reviewed the Snyder land exchange agreement and the SUP in October 2004 and found them to be in legal order. The Attorney-Advisor told either the NPS Associate Regional Director for the National Capital Region or the C&O NHP Lands Coordinator that they should consider adding more exceptions to the SUP other than the one originally cited.

The Attorney-Advisor described Superintendent Brandt as being "anxious" regarding Snyder's tree-cutting issue. The Attorney-Advisor had met with Brandt and the C&O NHP Lands Coordinator on several occasions relating to the easement documents. The Attorney-Advisor said the Snyder land exchange was a legally appropriate document and defensible. The Attorney-Advisor added that the SUP was unusual in regard to other land exchange agreements and that they do not see too many of these permit types.

The SUP also required the Snyder's to obtain a Letter of Credit (LOC) from Bank of America for \$100,000 in lieu of a performance bond to ensure the work was completed according to the terms of the SUP. LOCs are routinely used in commercial transactions. The Snyder LOC is a particular type of LOC called a "standby" LOC because its purpose is to protect NPS from another party's unsatisfactory

performance or inability to perform. In addition, the SUP incorporated NPS conditions. These provisions require the Snyders to comply with all applicable laws, regulations, and permitting requirements and to ensure that they do not knowingly present false information. The NPS may present and demand payment of the LOC if the Snyders failed to comply with the terms of the SUP.

An Attorney from the Maryland-National Capital Park and Planning Commission (M-NCPPC), Silver Spring, MD, said that Snyder initially requested an exemption from Montgomery County to add a ballroom to his residence in 2001, thus altering the roofline of the main house (hereafter referred to as the “roofline/building elevation” issue). The county ordinance provides for a roof height of 50 feet, exclusive of chimneys. In early 2002, this issue became resolved, and Snyder added the ballroom to the main house. According to the Attorney, Snyder provided a Declaration of Intent, as defined in Chapter 23A of the Montgomery County Code, in which he said that he would not make any other alterations to the residence for 5 years.

The Attorney from the Maryland-National Capital Park and Planning Commission pointed out that officials in Montgomery County became aware of the more than 40,000 square feet of trees that Snyder cut down in November 2004 after neighbors and other county residents wrote letters to M-NCPPC complaining about the property Snyder had cleared. Snyder was cited by Montgomery County for violating county code in December 2004, and fined \$1,000.

The M-NCPPC Attorney said, “to my knowledge no one [from NPS] contacted this agency” for either “understory” or “overstory” clearing at Snyder’s residence. According to Montgomery code, Snyder and others have 5,000 square feet of “understory” exemption. The Attorney pointed out that Chapter 22A-4 of their code requires a permit to cut more than 5,000 square feet of land.

The Attorney pointed out that Montgomery County uses the terms “invasives” or “non-native” species instead of the term exotics used by NPS for unwanted vegetation. The county code allows the clearing or removal of non-native species by hand, one plant at a time, no machines. The Attorney said that no clear cut, as Snyder did, is allowed because the canal involves steep slopes and clear cutting results in erosion.

The Attorney advised that Snyder and M-NCPPC signed a settlement agreement on August 8, 2005. The agreement requires Snyder to implement a restoration planting plan approved by the Commission within 90 days after execution of the agreement. The plan includes reforestation of 1.3 acres of cleared area, enhanced planting outside the cleared area, purchasing the equivalent of three acres of land to be deposited in a forest conservation bank (minimum to be spent-\$37,000), permanent protection of existing forest, and posting a \$45,000 bond for 2 years of maintenance costs.

M-NCPPC provided an incomplete inventory of native species trees cleared by Snyder in the affected easement area. The inventory was incomplete due to GPS equipment failure. No value was placed on each tree by M-NCPPC. Also, the condition of each native tree cut could not be determined. According to M-NCPPC, a total of 34 native species trees over 6-inches dbh were cut by Snyder on the easement.

The Attorney said that they have been in contact with NPS to ensure that there is no future lack of communication between NPS and the county in matters affecting easement areas. They are working out a system with NPS to prevent this type of lapse in the future.

According to NPS Director Fran Mainella, in the future, and in response to the controversy surrounding the Snyder tree-cutting issue, she agreed to push her subordinates, mainly park Superintendents, to follow Director's Order 75A, which states that NPS should reach out to their various local communities (such as Montgomery County) and establish contacts. Mainella felt that this would prevent the Superintendents from operating in a vacuum.

An employee in the NPS Office of Congressional and Legislative Affairs (OCLA) advised that he became aware of the Daniel Snyder tree-cutting issue in January 2005. He recalled that a Congressman had inquired as to what happened regarding the Snyder tree cutting. He related that in response to the Congressman's inquiry, he scheduled a meeting with Superintendent Brandt on January 12, 2005, to be briefed on the tree-cutting issue. He mentioned that a Legislative Specialist joined the meeting with Brandt.

The OCLA employee described Brandt's briefing as an overview of the land exchange agreement, a discussion of the media fallout, before and after photographs of the easement trees, the new plantings on Snyder's property, why the agreement was reasonable and the criticism of NPS from neighbors and interested parties. The employee recalled that Brandt raised the issue of invasive species that needed to be removed from Snyder's property. The employee thought he may have taken Brandt up to Capitol Hill to brief the Staff Director of the House of Representatives Sub-Committee on Parks.

P. Daniel Smith's Influence on Snyder's Land Exchange

P. (Paul) Daniel Smith (Danny or Dan Smith) had been employed by NPS for 3 years as the Special Assistant to NPS Director Mainella before he was named Superintendent of the Colonial National Historical Park on December 1, 2004. Smith handled Special Projects for the NPS Director characterized by intense interest from the public, special interest groups, Cabinet level officials and Congress. Smith exercised full delegated management authority for project planning and implementation. Smith served as the Director's principal representative in managing activities associated with special projects.

Smith had previously been involved with public/private citizens and NPS issues. A Park Ranger at the George Washington Memorial Parkway advised that he had met twice with Smith regarding issues involving congressmen and private citizens. The first involved a GW Parkway Superintendent asking him to meet with Smith in the area of the Iwo Jima Memorial in 2002. The Park Ranger said he met Smith and a Member of Congress from Florida. According to the Park Ranger, the Member of Congress was condo shopping with Smith's assistance. The Park Ranger commented that the Member of Congress spoke to him regarding trees along the GW Parkway that could possibly block a view from a condo he was considering purchasing. The Park Ranger said the Member of Congress asked if the trees could be cut.

The second encounter with Smith occurred during 2003 to 2004 and involved a property owner whose driveway was encroaching into the GW Memorial Parkway. The Park Ranger attempted to resolve the issue; however, the owner wrote a letter to his Senator, complaining about the Park Ranger and NPS. The Park Ranger advised that P. Daniel Smith became involved and ordered the Park Ranger to meet with him at DOI. Smith told the Park Ranger to resolve the issue with a land exchange. The Park Ranger recalled that he never spoke again to Smith. The Park Ranger felt that Smith's personal attention and high level involvement with both incidents was "odd."

The Park Ranger was asked by investigators whether he had knowledge regarding the Snyder tree-cutting issue at the C&O NHP. He advised that he had contact with a few friends at the canal and was told by them the issue was mishandled by NPS. The Park Ranger's own opinion was that NPS changed course in the Snyder case. He specified that NPS had always protected trees and vegetation with a no-cut policy and in the Snyder case, for some reason, reversed that policy.

According to the C&O NHP Lands Coordinator, Smith's involvement with the Snyder easement issue dated back to early 2002. The C&O NHP Lands Coordinator provided investigators with a memo from his work calendar dated January 28, 2002. He wrote:

9:30 am. Call from Mr. Dan Smith, Special Assistant to the Director. Mr. Smith wanted to know the status of the Snyder easement request and correspondence. He asked if cutting/building issues had been resolved. I said the building issue was solved but that we were trying to mitigate Mr. Snyder's intention to cut all trees 6 inches dbh and under. Mr. Smith asked if we allowed mitigation donations. I said that mitigation would be based on equal value exchange of interest based on fair market appraisal.

Smith advised that he does not recall speaking to the C&O NHP Lands Coordinator regarding the tree-cutting issue in January 2002, only the roofline/building elevation issue, nor did he recall speaking to the C&O NHP Lands Coordinator regarding an offer of \$25,000 from Daniel Snyder to NPS to mitigate tree-cutting and roofline/building elevation issues.

AGENT'S NOTE: In a letter from Snyder's land-use Attorney to the former Superintendent of the C&O NHP, dated January 8, 2002, Snyder's Attorney proposed that Snyder would agree to "mitigation" in the form of a cash contribution in the amount of \$25,000 to be used for a flood fund that was established for the C&O Canal or another fund of the Park's choosing previously mentioned by the former Superintendent. In a subsequent letter to Snyder's Attorney, dated January 28, 2002, the former Superintendent wrote, "We regretfully cannot accept Mr. Snyder's generous offer of a \$25,000 cash contribution as mitigation for scenic easement variance requests."

The C&O NHP Lands Coordinator related that he received a telephone call from Smith after his (the C&O NHP Lands Coordinator's) April 2004 meeting with Snyder. Smith told the C&O NHP Lands Coordinator that he had received a call from Snyder's Attorney and that Snyder was not happy with the pace of the negotiations with NPS concerning the scenic easement. Smith continued and stated that Snyder wanted to address the issue of exotics on the easement. Snyder wanted to cut the exotics over 6 inches dbh on the easement. Smith opined to the C&O NHP Lands Coordinator that NPS was in the business of eradicating exotic species and that Snyder wanted to do the same. The C&O NHP Lands Coordinator commented that the tone from Smith was "let's get this done."

The C&O NHP Lands Coordinator admitted that after his conversation with Smith, he felt pressure to secure an agreement with Snyder. He related that he met with Smith at least twice after the call, once at Snyder's residence in June 2004 and another time on the C&O Canal towpath below Snyder's residence.

Superintendent Brandt advised that shortly after the C&O NHP Lands Coordinator's April 2004 meeting with Snyder, he had a telephone conversation with Smith. Brandt recalled that Smith raised the issue of exotic trees, asked if NPS was removing exotics elsewhere, and asked why NPS would not

discuss their removal in regard to the Snyder property. Brandt did not view the call from Smith as unusual but admitted that this was the first time he had received such a call.

AGENT'S NOTE: Brandt was interviewed a second time by investigators approximately one month after his initial interview. The following statements by Brandt are in contrast to his previous testimony.

Brandt, in his second interview, said that in retrospect, P. Daniel Smith came to be involved differently in the Snyder tree-cutting issue than he initially explained to investigators. Brandt advised that Smith's involvement had a substantial impact on how he made his decisions concerning the Snyder tree-cutting issue.

Since Smith worked directly for the NPS Director, Brandt said, "In my mind there is no internal reason to raise the issue to his [Smith's] level that I am aware of." Brandt felt the tree-cutting issue should have been decided solely at the Superintendent's level, not from NPS Headquarters. According to Brandt, after he briefed Smith over the phone in late summer 2004, Brandt had no further contact with Smith about Snyder.

When Brandt was asked if Smith's call had any impact on him, Brandt responded, "I'm sure it influenced me." Brandt believed that Smith's presence and involvement affected his decisions regarding the Snyder negotiations. Brandt said he was told by unnamed persons at NPS Headquarters that "Danny Smith was going down the hall saying, 'I can't believe that they won't let them cut exotics,'" when referring to the Snyder tree-cutting issue. In order to place what occurred in context, Brandt pointed out that he was a new superintendent and he wanted to be considered a "team player," which added to the impact of Smith's influence on him. He had never talked with Smith before and felt that a call from anybody in the NPS Director's office was important. Brandt felt that Smith was representing the NPS Director on the tree-cutting issue, resulting in Brandt feeling pressure to meet what he believed were Smith's expectations. Brandt also pointed out that, if Smith had not been involved, he would not have felt the need to "get personally involved" himself. Brandt, in retrospect, said that he would have taken his time, especially concerning the land exchange, if not for Smith's continued involvement.

According to Brandt, he did not feel any influence directly from the NPS Director. In fact, Brandt said that the only thing he said to the Director was, "We've been working with Dan Smith on the Snyder thing."

The Chief of Interpretation, C&O NHP, advised that he was the Acting Superintendent for the C&O NHP when he received a telephone call on June 2, 2004, from P. Daniel Smith regarding the Snyder tree-cutting issue. The Chief of Interpretation related that Smith told him that Daniel Snyder had called the Secretary of the Interior's office and the call eventually reached him. Smith told the Chief of Interpretation that Snyder was unhappy with the delay for a solution to his tree-cutting problem. Smith informed the Chief of Interpretation that he told Snyder to go ahead and cut the 6-inch dbh and under vegetation on his property.

The Chief of Interpretation recalls having the impression from Smith that Secretary Norton or Director Mainella wanted the Snyder tree-cutting issue resolved. The Chief of Interpretation commented that he does not recall Smith's exact words that caused him (the Chief of Interpretation) to form this impression. He said he felt that Smith was pressuring the C&O NHP officials to resolve the issue in favor of Snyder.

According to P. Daniel Smith, he became involved with the Snyder tree-cutting issue in the late summer of 2004. Smith advised that he received a telephone call from an Attorney for the Washington Redskins. Smith stated that he had previously worked with Snyder attorneys to resolve the roofline/building elevation issue at the Snyder residence in 2002. Smith recalls speaking on several occasions with the Redskins Attorney prior to their first meeting. Smith related that he had broad discretion to resolve the easement issue with Snyder. Smith did not elaborate on who might have given him that discretion. Smith said that in the spring of 2004, the Redskins Attorney invited him to lunch at the Snyder residence to discuss the tree-cutting issue. Smith related that this lunch occurred before Snyder cut the understory on his property in June 2004.

AGENT'S NOTE: Smith's recollection of pertinent dates relating to the tree-cutting issue changed as the interview progressed.

Smith claimed to follow up on the Snyder lunch issues with the appropriate C&O NHP staff. Smith stated that he walked Snyder's property and the towpath below the scenic easement. Smith's impression was that Snyder was "frustrated" with the lack of progress over the tree-cutting issue with NPS. Smith remembered speaking with the Redskins Attorney several weeks after the meeting at Snyder's residence and advised him to work through Superintendent Brandt. After the phone call with the Redskins Attorney, Smith said he was not involved with the issue again.

Smith related that he does not recall speaking to Superintendent Brandt over the phone regarding the technical aspects of the Snyder tree-cutting issue; however, he said he phoned the C&O NHP Lands Coordinator several times to discuss technical issues. Smith admitted that he may have spoken to Brandt over the phone to arrange meetings of issue principals in the spring of 2004; in contrast, Brandt stated that he fielded several telephone calls from Smith on the Snyder issue from April 2004 through the fall of 2004.

According to Smith, he thinks he became aware of both the Snyder roofline/building elevation and tree-cutting issues after someone mentioned them to Director Mainella during a Redskins football game. Smith did not recall what month or year this alleged conversation took place. Smith advised that he was positive that no one else in DOI or on Capitol Hill was involved regarding the Snyder tree-cutting issue. Smith denied exerting any pressure on Superintendent Brandt or anyone at the C&O NHP on this issue.

According to Director Mainella, she does not know how Smith became involved with the Snyder tree-cutting issue. Mainella recalled that Smith had been previously involved in a C&O issue when complaints came in regarding the former Superintendent not getting along with a few C&O property owners. Mainella believes Smith became involved at the request of a Congressman. According to Smith, he did not speak with a Congressman regarding the Snyder tree-cutting issue.

Mainella was advised by investigators that Smith had stated in his interview that someone had approached Mainella at a Redskins football game and asked her to assist in Snyder's tree-cutting and roofline/building elevation issues with NPS. Mainella stated that Smith's version was "not true."

Smith stated that he originally dealt with the Snyder land-use Attorney concerning the roofline/building elevation issue, which Smith believes occurred in the fall of 2001 or 2002; he could not be certain. However, Smith reiterated his prior claim that NPS Director Mainella met someone at a Redskins football game and she told this person to call Smith to resolve Snyder's tree-cutting issue. Smith states that Snyder's land-use Attorney called him shortly thereafter and made an appointment regarding

the tree-cutting issue. Smith did not recall when this issue first presented itself. Smith believed he had an initial meeting with Snyder's land-use Attorney in October or November 2001, during football season.

Snyder's land-use Attorney recalled contacting Smith directly regarding the tree-cutting issue. He did not remember how he obtained Smith's name and number but said he met with Smith at DOI sometime in the fall of 2001. The Attorney stated that he brought a copy of the easement agreement to the meeting. According to the Attorney, mitigation issues did not come up in the discussion, and he did not bring any blueprints of Snyder's residence to the meeting. He also does not remember discussing Snyder's roofline/building elevation issue at the meeting. The Attorney commented that Smith promised to send the agreement to the DOI Solicitor's office and gave him the name of the former C&O NHP Superintendent. The Attorney advised this was his only contact with Smith concerning Snyder's tree-cutting issue and, thereafter, he dealt solely with the former C&O NHP Superintendent.

Smith stated that he never briefed Director Mainella on the Snyder tree-cutting issue. He reiterated that someone had mentioned Snyder's problems to Director Mainella at a Redskins-Giants football game in 2001 or 2002. Smith affirmed his earlier assertion that through that conversation, Mainella asked him to look into Daniel Snyder's proposals and concerns. Smith advised this is how he became involved with Daniel Snyder's tree-cutting and roofline/building elevation issues.

Mainella was advised by investigators of Smith's second interview regarding his involvement in Snyder's tree-cutting issue. Mainella was told that Smith maintained that he became involved with Snyder's problems after Mainella had attended a Redskins football game and was asked by someone to assist in Snyder's tree problem with NPS and that Mainella asked Smith to look into the tree-cutting issue. Mainella reiterated her prior statement that Smith was mistaken in his recollection.

Mainella also reported that, after checking her schedule and speaking with her husband, she is certain that she has only attended one football game in Washington, D.C. She claimed that she attended a game in the fall of 2003 with her husband and several officials from the Bush administration. She had no memory of speaking to anyone regarding Daniel Snyder or the C&O NHP during the game.

The NPS Deputy Director related that he never had been personally contacted by anyone from inside or outside of DOI regarding the Snyder tree-cutting issue and was unable to explain how Smith had become involved. The Deputy Director did confirm that if an issue involving the C&O NHP had been presented to the NPS, it would have been passed along to Smith.

The Deputy Director was advised that Smith had told investigators that NPS Director Mainella had spoken with someone at a football game regarding Snyder's problems and had promised to have someone look into Snyder's tree-cutting issue. The Deputy Director said he had never heard such an account and speculated that Smith was "confused."

The Redskins Attorney advised that he became involved with the Snyder tree-cutting issue in early 2004, when he telephoned P. Daniel Smith and discussed a resolution to the problem. The Redskins Attorney said he does not remember how he obtained Smith's number. He thought he got the number for Smith from someone outside of government channels.

The Redskins Attorney recalled speaking to Smith on several occasions in the spring of 2004. He remembered a meeting at Snyder's residence in the summer of 2004 with Superintendent Brandt, the C&O NHP Lands Coordinator, and Smith to discuss a resolution to the tree-cutting issue.

Smith claimed that the Redskins Attorney introduced the topic of invasive species by producing a pamphlet authored by NPS on exotic vegetation removal. Smith responded that he did not know why NPS was not concerned with removal of exotics. Smith recalled speaking to the Redskins Attorney regarding the progress of the tree-cutting negotiations during the summer of 2004.

According to the Redskins Attorney, he did not recall NPS Director Mainella ever attending a Redskins game as a guest of Mr. Snyder. Investigators related Smith's recollection that someone had approached Mainella at a Redskins game regarding Snyder's problems with cutting vegetation on his property. The Redskins Attorney stated that he does not believe Smith's recollection to be plausible. The Redskins Attorney did not recall speaking with any other NPS or DOI officials regarding the Snyder tree-cutting issue. He believed that a wealthy friend of Snyder's, with similar tree-cutting issues, referred Smith to Snyder.

According to another Attorney for Daniel Snyder, he could not recall NPS Director Mainella ever attending a Washington Redskins football game as a guest in Daniel Snyder's private suite. The Attorney checked the list of attendees for Snyder's box for the past 4 years and Mainella's name did not appear on the list.

As to the question of how Smith became involved in the Snyder tree-cutting issue, Snyder's Attorney surmised that Snyder had conversations with many people regarding the tree-cutting problem. Through discussions with others, the Attorney assumed that the topic made its way to NPS and eventually to Smith. The Attorney related that it was Smith who initially called Snyder and said he would handle the matter. The Attorney stated that Smith later met Snyder and put him in touch with Superintendent Brandt. Thereafter, the Redskins Attorney and Brandt worked together on a resolution.

Smith insisted that he never called Snyder or his attorneys first; they contacted him over the tree-cutting issue. Smith said he took a telephone call from Snyder and the Redskins Attorney in the spring of 2004 asking him to resolve the impasse between NPS and Snyder. Smith did not recall speaking with the other Snyder Attorney.

A Special Assistant to the NPS Director claimed that he was unaware that Snyder had ever contacted NPS regarding construction or clearing trees along the C&O NHP until news articles appeared in *The Washington Post* in 2004. He also could not explain how Smith had become involved. The Special Assistant admitted that while it appeared to him that some DOI "political" or some congressional member had asked Smith to handle Snyder's tree-cutting issue, he had no direct knowledge of any such call or conversation. He denied any knowledge or that he had ever heard that Secretary Norton, the former Deputy Secretary, or any other DOI official was involved or tried to influence a decision by NPS personnel. The Special Assistant was aware that a Congressman had been involved in previous issues associated with the C&O NHP but was confident that the Congressman was not involved in this particular issue.

The Special Assistant was advised that Smith had told investigators that NPS Director Mainella had spoken with someone at a Redskins football game about Snyder's problems and had promised to have someone look into the issue. The Special Assistant denied that he had ever heard such an account and expressed certainty that if he had ever heard such a story, he would remember it.

The Special Assistant confirmed that if an issue involving the C&O NHP had been presented to NPS, it would have routinely been passed along to Smith. He claimed that the former C&O NHP Superintendent could be very difficult to deal with and he was not surprised that Brandt had little or no exposure to Snyder's tree-cutting and roofline/building elevation issues while serving as the former Superintendent's deputy. The Special Assistant admitted that he knew Superintendent Brandt well and considered him a good person, but unprepared to deal with Snyder's attorneys.

NPS Director Mainella advised that Superintendent Brandt may have made some inexperienced management decisions regarding Snyder's tree-cutting issue if he was receiving communications from Smith. Mainella reiterated that she did not direct Smith to become involved with Snyder.

Superintendent Brandt opined that in retrospect, if not for the involvement of Smith, he "probably would have done things differently" regarding Snyder. Brandt said, "I would have arrived at a different decision."

The impact of the NPS and the C&O NHP decision to allow Snyder to cut all vegetation on the scenic easement compromised their previous no-cut policy regarding easements and removed a visual buffer between the visiting public and landowner in contradiction as to why the easement was purchased originally. NPS also failed to follow the DO-12 NEPA analysis and documentation. NPS permitted the influential intervention of P. Daniel Smith into the decision-making process through his position as a Special Assistant to the NPS Director and minimized Superintendent Brandt's authority to make an independent judgment. NPS was also subjected to adverse media accounts regarding their business with Snyder. Smith, over the course of two interviews with investigators, was less than candid in many of his recollections of events regarding how he became involved with the Snyder tree-cutting issue.

In the summer of 2004, the NPS Chief Horticulturist had warned that the removal of the 6-inch dbh and under vegetation on the Snyder easement "severely compromised" the visual protection and natural functioning of the plant community and increased the potential for exotic invasion and erosion. The Chief Horticulturist's team also advised that deliberate planting (Snyder's 600 saplings) in this area would only add to the recent disturbance and increase the potential for erosion. His prediction has proven true, as erosion is evident in ground level and aerial photographs taken of the Snyder residence since the June and November 2004 vegetation cuts.

This investigation was presented to the Assistant United States Attorney for Washington, D.C., of the Fraud and Public Corruption unit. It was declined for prosecution due to lack of prosecutorial merit.

Disposition

This investigation has been concluded and referred to NPS for appropriate action.

Photographs of the Snyder Property and Scenic Easement

