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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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December 12, 2011

The Honorable Ken Salazar
Secretary of the Interior
United States Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Mr. Secretary:

The Committee on Oversight and Government Reform is investigating the recent news that the National Park Service (NPS) has enabled protesters from the "Occupy DC" movement to damage a park that had recently been rehabilitated with taxpayer funds. While the protesters' continued occupation of the park appears to violate the law, the NPS has not taken any action to enforce the relevant statute. This situation raises questions about why those decisions were made, who participated in making them, and whether political judgments played a role in not enforcing the law.

As part of the stimulus, the Department of Interior (DOI) awarded more than $400,000 to the Fort Myer Construction Corporation to rehabilitate McPherson Square in Northwest Washington.[1] A spokeswoman for the NPS explained that the rehabilitation included "new grass, concrete curbs, refurbished benches, new light poles, water fountains, new paint, new chain fencing, 12 new trash cans and new light meters."[2] While the merits of this stimulus funding are debatable, we can all agree that once the federal government had invested the funds, no government agency should have allowed it to be damaged or destroyed when it legally could have been prevented.

However, the NPS seemingly allowed protesters as part of the "Occupy DC" movement to ecologically damage the park significantly over the past two months by camping and killing the newly planted grass. McPherson Square is administered by the NPS and governed by Section 7.96 of Title 36 Code of Federal Regulations.[3] Under this statute, camping is generally

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[1] "Contracts-Award Summary: Award Number C3400100099," Recovery.Gov. *Available at:* http://www.recovery.gov/Transparency/RecipientReportedData/Pages/RecipientProjectSummary508.aspx?AwardIDSUR=103676&qtr=2010Q4.

[2] Liz Farmer, "Turf war in McPherson Square," *The Examiner,* October 20, 2011. *Available at:* http://washingtonexaminer.com/local/2011/10/turf-war-mcpherson-square.

[3] This section governs national parks in the "National Capital Region" which includes McPherson Square.

not allowed in parks unless it occurs in designated camping areas or is specifically allowed by NPS. Specifically, §7.96(i) states that "camping is permitted only in areas designated by the Superintendent, who may establish limitations of time allowed for camping in any public campground."[4] The NPS clearly did not legally permit camping in McPherson Square based upon a flyer that NPS posted and distributed in McPherson Square entitled "Help Us Preserve McPherson Square."[5] The flyer said that "while temporary structures or tents are allowed in the park under some circumstances, **camping is not permitted**" and then went on to cite §7.96(i).[6] Based upon the information included in the NPS' own flyer, the protesters camping in McPherson Square appear to be in violation of the law and the NPS could have legally required them to stop and remove their tents.

The NPS did not, however, prevent the protesters from camping. One report from NBC Washington stated that there were over 100 tents in McPherson Square and that while "people are barred from camping or cooking there....the demonstrators are doing both in plain view of police."[7] When questioned about the protesters camping in McPherson Square, a NPS spokeswoman attempted to make a distinction between "camping" and a "24 hour vigil," saying that "camping is making preparations for sleeping, sleeping, (sic) setting up housekeeping. But, all that said, tents are allowed there. And a 24-hour vigil is allowed there."[8] This distinction is confusing given the well-established facts: for weeks, the Occupy DC protesters have been camping on the grass in McPherson Square and killing much of it. The NPS took no action against the protesters' encampment until the protesters attempted to build a wooden structure; Park police responded by arresting several protesters because they did not have a building permit.[9] Nevertheless, the NPS has still not required the protesters to stop camping nor are they removing their tents. Recently, a ruling by a U.S. District judge stated that the NPS is required to inform the protesters one day before evicting them from McPherson Square but did not

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[4] Camping is defined by the regulation as: "the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging." Title 36: Parks, Forests, and Public Property. *Available at:* http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3376fe5bda601ab5a949272d753e151e&rgn=div8&view=text&node=36:1.0.1.1.7.0.1.95&idno=36.

[5] "National Park Service Distributes Rules for Occupied McPherson Square," NBC Washington, October 27, 2011. *Available at:* http://www.nbcwashington.com/news/local/National-Park-Service-Distributes-Rules-for-Occupied-McPherson-Square-132729058.html.

[6] Emphasis Added. "Help Us Preserve McPherson Square," National Park Service. *Available at:* http://media.nbcwashington.com/documents/McPherson+Education+Handout.pdf.

[7] Ben Nuckols, "No Crackdown on Protesters in D.C.," NBC Washington, October 25, 2011. *Available at:* http://www.nbcwashington.com/news/local/No-Crackdown-on-Protesters-in-DC-132582478.html.

[8] Arin Greenwood, "Occupy DC: McPherson Square Protesters Can't Camp. Or Can They?" *Huffington Post,* November 1, 2011. *Available at:* http://www.huffingtonpost.com/2011/11/01/occupy-dc-camping_n_1068027.html.

[9] Pamela Constable and Fredrick Kunkle, "Occupy D.C. protesters arrested in standoff over makeshift shelter at McPherson Sq.," *The Washington Post,* December 4, 2011. *Available at:* http://www.washingtonpost.com/local/occupy-dc-protesters-arrested-in-standoff-over-makeshift-shelter-at-mcpherson-sq/2011/12/04/gIQAEld9TO_print.html.

prevent the NPS from evicting the protesters if the NPS gives the protesters that one day warning.[10]

The NPS has an obligation to the American people to explain the decisions that were made regarding the Occupy DC protesters in McPherson Square. The NPS allowed the protesters to camp in McPherson Square and kill newly planted grass that had been funded by the stimulus. Now much of the grass has been destroyed, wasting much of the hundreds of thousands of dollars in taxpayer money used to rehabilitate McPherson Square. The Oversight and Government Reform Committee is seeking to understand how these decisions were made and why.

As soon as possible, but no later than January 3, 2012, please provide the following:

1. A written explanation for why the NPS allowed the protesters to camp in McPherson Square and destroy the newly planted grass;
2. A written explanation of whether the NPS believes that the protesters camping at McPherson Square are in violation of the law;
3. A written explanation of the legal difference between a "24 hour vigil" and "camping";
4. A full and complete written explanation along with relevant documentation of how and why the NPS determined the actions of the protesters at McPherson Square to be a "24 hour vigil" as opposed to "camping";
5. A full and complete explanation of any arrests made in McPherson Square related to the Occupy DC protests;
6. All legal writings that the NPS is relying on in determining whether or not to evict the Occupy DC protesters from McPherson Square;
7. A written explanation of which office at DOI was responsible for the final decision to allow protesters to camp in McPherson Square;
8. A written explanation of when, if ever, the NPS plans to force the protesters to stop camping in McPherson Square;
9. A written explanation of whether DOI plans to do further rehabilitations to McPherson Square once the protesters leave to repair the damage that they have done and any cost estimates for how much this additional rehabilitation would cost;
10. A written explanation of what steps, if any, the NPS or DOI plans to take to seek recompense from Occupy DC for any damage to McPherson Square;

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[10] Tim Craig, "Park Police must provide Occupy D.C. notice before eviction, judge says," *The Washington Post,* December 5, 2011. *Available at:* http://www.washingtonpost.com/local/park-police-must-provide-occupy-dc-notice-before-eviction-judge-says/2011/12/05/gIQAbjwIYO_story.html?tid=pm_local_pop.

11. All communications between the NPS and DOI headquarters involving the Occupy DC protests in McPherson Square;

12. All communications between the NPS, DOI, and the White House involving the Occupy DC protests in McPherson Square;

13. All communications involving the NPS involving the decision of whether or not to allow the protesters to camp in McPherson Square;

14. All communications involving the NPS and DOI personnel related to the "Help Us Preserve McPherson Square" flyer;

15. All communications between the NPS and any representatives or associates of the Occupy DC movement, anyone claiming to represent the Occupy DC movement, or anyone affiliated with a group or organization that participated in any Occupy DC movement protest or event; and

16. All communications between DOI headquarters and any representatives or associates of the Occupy DC movement, anyone claiming to represent the Occupy DC movement, or anyone affiliated with a group or organization that participated in any Occupy DC movement protest or event.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request. On each item provided, please indicate which question the item is being responsive to.

When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

Please contact the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED TWELFTH CONGRESS

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House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Majority (202) 225–5074
Minority (202) 225–5051

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.

8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157of the Rayburn House Office Building and the Minority Staff in Room 2471of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.