

**Negotiated Rulemaking Advisory Committee for
Off-Road Driving Regulations at Fire Island National Seashore**

FINAL CONSENSUS AGREEMENT

August 22, 2003

I. NUMBERS OF PERMITS, PRIMARY TRANSPORTATION, ALLOWANCES FOR TIMES AND AREAS FOR DRIVING

A. What is “primary transportation”?

The primary source of transportation to and from Fire Island is by water via watercraft. Fire Island National Seashore is a unique natural and cultural roadless area. Thus, the primary and preferred means of transportation for all individuals, goods, and services is by water. However, the Park and its many users recognize modern life and public safety depends, at least to some degree, on driving via motorized landed vehicles. Thus, the Park allows, though regulates, minimum driving as necessary as do the incorporated towns and villages within the Seashore. This emphasis of "that which can come by water should come by water" should be reflected in the preamble, purpose or other appropriate language of the regulations.

B. Who maintains access to the Seashore?

The Park maintains the access to the Seashore at checkpoints at or near the boundaries of federal lands near the Lighthouse in the west and near the Wilderness Visitor's Center at the western boundary of Smith Point County Park in the east.

C. How is a “trip” defined in the regulations and where can one enter and leave the Seashore?

A trip shall be defined as one round trip within a twenty-four (24) hour period through the check points at or near the boundaries of federal lands near the Lighthouse on the west and near the Wilderness Visitor's Center at the western boundary of Smith Point County Park in the east. Any permitted driving across the National Seashore boundary not through these check points is prohibited with the exception of permitted vehicles driving over seashore property to transport goods delivered by waterborne conveyance which do not pass through the checkpoints.

D. How will the dunes of Fire Island be protected from adverse impacts of driving?

In order to protect the dunes that provide barriers to the ocean's waves and storms and habitat important for endangered species and other coastal wildlife, no driver shall drive within 20 feet seaward of the toe of dunes or visible beach grass at all times during the year. (Rhizome Rule) If 20 feet of beach is not available from the toe of the dune/beach grass to the waters edge then motor vehicle travel is prohibited. In order to ensure adequate protection of this resource, the appropriate agency or entity shall employ staff and/or monitoring devices from the beginning of the fall driving season to the end of the spring season to

ensure adequate monitoring and enforcement of this provision. This monitoring and enforcement function may be funded through a variety of sources, including permit fees. In order to allow for County enforcement as well as Park enforcement, this regulation must also be incorporated into the municipal regulations.

E. Are any beaches closed to driving year-round?

In order to protect the natural resources and character of beaches on or directly adjacent to some federally owned parcels, the Park will close the Lighthouse Beach, Sailors Haven (Sunken Forest) Beach, and a portion of Watch Hill Beach. The Park may also close the beach at Barrett Beach and Talisman to protect natural resources consistent with the Endangered Species Management Plan. The Park agrees that it will take reasonable measures to keep an inland route open to allow motor vehicle travel behind these beaches and shall not use this authority to prevent vehicular access across these areas.

F. Are there geographic zones of the Seashore where the National Park Service will allow driving on the ocean front beach?

The Seashore will be divided into three zones for the purposes of driving. The western zone will extend from the Kismet Dune Crossing (Lighthouse) to the western boundary of Sailor's Sailors Haven (Sunken Forest). The central zone will extend from the western boundary of Sailor's Haven to the dune crossing at Watch Hill. The eastern zone will extend from the dune crossing at Watch Hill to the western boundary of Smith Point County Park. Driving in all areas will be subject to the Rhizome Rule and the Park's Threatened and Endangered Species Management Plan.

- In the western zone, driving will be allowed as described under the seasonal allowances, subject to the rhizome rule.
- In the central zone, driving will be allowed only on inland routes unless there is no inland route or until such time that an inland route is developed. Driving will be subject to the seasonal allowances outlined elsewhere in the regulations.

G. How will categories of permits be defined and how many permits will be granted to each category?

The Park shall work with the incorporated municipalities to further detail the definitions for categories of permits. In general, the categories are defined as follows.

1. Categories Defined

Public Utility: any public utility or public service company that provides, contracts, franchises, or licenses the delivery of water, electricity, and telephone. Permits are granted only for, and driving limited to, the delivery of these services.

Year-Round Resident: persons who are legally domiciled on the Island and who, in addition, physically reside in their fixed and permanent homes on the Island continuously for 12 months of the year, except for brief, occasional and infrequent, absences.

Part-time Resident: Persons are eligible for a Part-Time resident Permit are those who physically and continuously reside in their domicile for less than 12 months of the year and who held a residential permit as of January 1, 1978.

For Year Round Resident Permit Holders qualifying for the above definition of Part-Time Resident who switch to Part-Time Resident Permits, they must reside on the Island for at least three (3) months of the year during the permitted driving time.

Essential Service: any service other than a public utility whose service on the Island is essential to the continued use of residences on the Island. This includes transportation of heating fuel oil and bottled gas, bulk fuel, and sanitation, construction debris, or refuse. Permits are granted only for driving limited to the delivery of these services to the Seashore.

Contracting and Business: any business other than a public utility or essential service involved in the construction, maintenance, or repair of structures or systems such as plumbing and electrical in the Seashore or the transportation of materials or supplies to year round retail business establishments in the Seashore. On-Island contractors are those who reside year-round on Fire Island and meet the definition of Year-Round resident as noted above. It is intended that this category would include plumbers and electricians. Permits are granted only for, and driving limited to, the delivery of these services and for transportation from the work site to outside of the Seashore and back.

Municipal or Community Employee: A year-round resident who is a full-time paid employee of one of the two incorporated villages or of one of the 15 unincorporated communities identified in the Act is eligible for a permit if such employment necessitates year-round Island residence.

Special Permits: The Superintendent may issue “special permits” for medical necessity, major infrastructure construction by municipalities or utilities, maintenance, ice over conditions and upkeep of community property for those communities without full-time, paid, year-round resident employees. Permits are granted only for the performance of the specific tasks and within the timeframe described therein.

Official Business: Any entity operating a motor vehicle operated and owned or leased by a federal, state, or local agency to transact official business [this does not include emergency response vehicles (police, fire, ambulance) or school buses]. Permits are granted only for the performance of official duties and while vehicles are on official business.

2. How many permits will be granted to each category?

Public Utility: Three (3) fleet permits, one each, will be granted for water, phone and electricity.

Year-Round Resident: Up to one-hundred forty-five (145) permits will be granted.

Part-time Resident: No more than one-hundred (100) permits will be granted with the intent of reducing this number to zero (0) over time.

Essential Service: Up to thirty (30) permits will be granted.

Contracting and Business: Up to one-hundred (100) permits will be granted.

Municipal or Community Employees: Up to thirty (30) permits will be granted. No more than five (5) permits will be issued per municipality/community.

Special Permits: Up to ten (10) permits may be issued at any one time, except more may be issued at the discretion of the Superintendent for emergencies.

H. Are there seasons and times when the National Park Service will allow driving?

In order to preserve the unique character of the Seashore, protect natural resources, maintain visitor and resident safety and enjoyment during the peak visitors' season, no driving will be permitted during certain seasons of the year for specific categories of driving.

Public Utility: Utilities may drive year-round with up to two trips per vehicle per day for official and necessary business only. Electricity and phone utilities will abide by no weekend driving (9 PM Friday evening until 12:01 AM Monday morning) except for emergencies and personnel doing restoration of services. In addition, utilities will work with the Park, municipalities and communities to seek ways to reduce driving to the greatest extent possible. Each utility will submit a plan to the Park Service for reducing driving.

Part-time Resident: Part-Time residents may drive the same as Year-Round residents.

Essential Service: Essential services may drive year-round with no driving from 7:00 AM Saturday until 11:00 PM Sunday evening from the Friday before Memorial Day to the Tuesday after Columbus Day. Weekday driving shall occur before 9 AM and after 6 PM from June 15 to September 15. However, essential services will work with the Park and municipalities to seek ways to reduce driving to the greatest extent possible. Barging refuse and other debris off-Island is strongly encouraged. Furthermore, any deliveries that can be made via waterborne conveyance shall be made by waterborne conveyance. In the Central Zone for the delivery of essential services, the Superintendent may make exceptions to this provision to service those communities.

Municipal or Community Employee: Municipal permit holders may drive up to two trips per day and driving times are the same as Year-Round residents.

Special Permits: Trips and driving times will be established on a case-by-case basis for each special permit.

I. Does the Park require an education course for driving on Fire Island?

Yes. As a condition of receiving a permit, any driver or an organization's drivers will be educated via web, video, class, or other means regarding the responsibilities of driving on Fire Island in order to protect natural resources and resident and visitor safety.

J. Can the superintendent make exceptions when granting permits under these regulations?

The superintendent may grant permits in exception to these regulations, on a case-by-case basis from time to time, as long as the granting of the permits is within the purpose and intent of these regulations and the enabling statute of the Park.

II. POLICE DRIVING

A. Is the Suffolk County Police Department required to have a permit to drive on Fire Island?

Law enforcement agencies with authority in the Seashore will not be required to have a permit to drive on the Island. Suffolk County Police Department Police officers who drive or are likely to drive on Fire Island shall receive a driver's awareness training developed by the Park at least once a year.

The methods, manner and locations of law enforcement vehicular operations in the Seashore will be determined in a different forum, which will include the federal government and the Suffolk County Police Department. Nothing in this statement limits any parties' rights and privileges to support, challenge, object, or remark on these determinations.

III. MANAGEMENT OF DRIVING AND OTHER ISSUES

A. Can I drive on Fire Island without a permit?

Most drivers cannot drive on Fire Island without a valid permit issued by the National Park Service. The only exceptions are the Park (official and administrative use), Fire Island school buses, fire fighting apparatus, and other federal, state and local law enforcement official vehicles having jurisdiction within the Seashore. Such non-permitted vehicles will be driven within the Seashore only while on official business and shall undertake the educational component described above for permitted drivers.

B. If I have a permit, where can I drive on Fire Island?

All permitted drivers can drive anywhere designated as an off-road driving route in the compendium to these federal regulations. The off-road routes on the oceanside beaches and across federal land will be designated by the Park on a periodic basis with the assistance of the Towns of Islip and Brookhaven and the Fire Island communities. Off-road driving is only permitted on routes specifically designated as such by the communities and the Park. Thus, any route that is not designated as an off-road driving route is not open to driving.

All permitted drivers can drive anywhere designated as on off-road driving route as indicated herein or in a compendium to these regulations. The current off-road routes on the oceanside beaches and federal lands are as follows:

1. Along the Atlantic Ocean on the south shore of Fire Island, within the Seashore's boundaries between the water's edge and the 20 feet seaward of the beach grass (*Ammophila breviligata*). If the water is higher than the twenty (20) foot line or the water's approach does not allow passage

below this twenty (20) foot line, vehicle travel is not allowed. Driving in this area is also subject to other restrictions such as the Endangered Species Act.

2. A one-mile route in the interior of the Island, crossing the “Lighthouse Tract” from the easterly end of the paved road in Robert Moses State Park to the eastern boundary of the Tract, which is the western boundary of the community of Kismet.
3. An interior route that extends intermittently the length of the Seashore, commonly referred to as the “Burma Road” but no further east than the western end of Watch Hill.
4. Dune crossings posted or listed in the compendium from the beach to the “Burma Road” or to off-road routes within the municipalities or communities.

Modifications to these routes will be made by the Park on a periodic basis, with the assistance of the incorporated municipalities, the Fire Island communities and other appropriate state and federal agencies. Any modification of the designated routes on oceanside beaches or federal lands will be noticed in the Federal Register, with an opportunity for public comment.

C. Who enforces the driving regulations?

The enforcement of federal regulations is the responsibility of the Park.

D. What happens if I break the driving rules?

Given the difficulty of enforcing these driving regulations, sufficient penalties are necessary to dissuade drivers from violating the rules. Procedures for fines and penalties for violations of the driving rules will be established and may include warnings, fines, and suspensions, and revocations including permanent revocation. For repeated or severe violations that harm human health and safety or harm natural resources, the Park may revoke the permit or individual drivers under a fleet permit for the remaining term of that permit or longer.

E. Can I drive if there is an emergency?

Vehicles may be driven in the event of an emergency. Immediately or as soon as possible thereafter, the Park will be notified.

F. Can the Park suspend driving?

Yes, the Park can suspend driving when such driving is inconsistent with the purpose of the Act or when such factors as weather, tides, and/or physical conditions render driving hazardous to human health and safety or would endanger natural resources.

G. Can I bike on Fire Island?

Bicycling, as defined by the NPS regulations, is considered an acceptable form of transportation and recreation in the Seashore. The Park will designate appropriate biking routes in the compendium to the driving regulations. The Park will designate the “Burma Road” as a bike path from the West End Park entrance to Sailor’s Haven on federal lands. Where a community has jurisdiction, it is encouraged to either designate the “Burma Road” or an alternate route a bike path. The Park will seek to incorporate local bicycling ordinances in the compendium to the driving regulations.

H. If I have a valid driving permit, can I park on federal land within the Seashore?

No, permitted vehicles are generally not allowed to park on federal lands, with the limited exception of the Fire Island Lighthouse Annex, which is administratively controlled by the Park.

I. Are year-round and part-time permits transferable upon the death of a holder to husbands, wives, or life partners, as defined by New York law, as long as the transferee meets the definition of a year round or Part-Time resident?

Yes.

J. Are there limitations to year-round or part-time permits issued per household?

Yes. There will be a one permit per household limit with the sole exception of children living at home who have not yet attained the age of twenty-five (25).

K. How often is the permit issued?

Permits are all issued once per year. Fleet permits may be issued for two years.

L. What about intercommunity driving within the Seashore?

In order to preserve the unique culture and character of Fire Island, all transportation that can occur without motorized vehicles should do so. It is understood that in the off-season, reasonable intercommunity driving within the Seashore for the purposes of Island life is necessary to preserve the Year-Round community. It is assumed intercommunity driving within the Seashore will not be necessary for purposes that should and can be accomplished by means other than by motorized vehicle.

The Fire Island Off-Road Driving Regulation Negotiating Committee agreed by consensus to the following Framework and Principles of Regulation during the negotiation and to include these in this Final Consensus Agreement. The Framework and Principles are listed below:

Framework

1. Need to reduce amount of driving (how this is to be accomplished is the subject of further deliberations), and;
2. Need to have permitted driving on the Beach that addresses three interests important to NPS and others:
 - Endangered Species Protection;
 - The Rhizome Rule; and,
 - Visitor Safety And Enjoyment.
3. Need to have uniform regulations adopted by all jurisdictions.
4. Need to shift much of the enforcement to Suffolk County Police Department.
5. Need federal enforcement to be primary at access points to Fire Island.
6. Need Burma Road to continue as an off-road driving route only. Must address bicycling need within this designation as a route.

Principles of Regulation

1. Protects the jewel that is Fire Island
 - Including its natural resources; and,
 - Its communities.
2. Abides by relevant existing laws and regulations.
3. Ensures fair and equitable, funded, and effective enforcement.
4. Addresses seasonal nature of life on Fire Island.
5. Reduces the amount of driving on the Island.
6. Ensures public safety of all.
7. If it can come by water, it should come by water.
8. Recognize interconnectivity among:
 - Water and land;
 - Beach and interior; and,
 - Park and communities.
9. Applies consistently across jurisdictions.
10. Strives for simplicity.
11. Achieves the appropriate balance of consistency, clarity, and flexibility.
12. Reflects the current situation and anticipates future conditions.
13. Is reasonable, rational, and practical.

Member Organizations/Stakeholder Groups Present When Consensus Was Reached:

Carters
Department of the Interior- National Park Service
East End Residents
Environmental and Conservation Organizations (1)
Environmental and Conservation Organizations (2)
Ferry Companies
Fire Island Law Enforcement Council
Fire Island Year-Round Residents
Island-Wide Stakeholders
Off-Island Contractors
On-Island Contractors
Suffolk County Police Department
Suffolk County Water Authority
Town of Brookhaven
Town of Islip
Utility Companies
Village of Ocean Beach
Village of Saltaire
Visitors
West End Residents (1)
West End Residents (2)
Year Round/Seasonal Residents