

Conflict Assessment:

The Prospects for Building Consensus on Fire Island National Seashore's Vehicle Use Regulations

A REPORT TO THE SUPERINTENDENT OF THE FIRE ISLAND NATIONAL SEASHORE

prepared by

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I. INTRODUCTION

In 1998 the Superintendent of the Fire Island National Seashore (FINS) initiated an internal review of the regulations governing motor vehicle use on Fire Island National Seashore lands. In response to concerns of local residents, visitors, and FINS staff, the Superintendent sought to explore the possibility of building consensus on new regulations controlling motor vehicle use within FINS. To assist the Seashore in an assessment of driving on Fire Island and to ensure objectivity of the assessment, the Superintendent retained the Consensus Building

Institute (CBI) to conduct this Conflict Assessment. CBI is a non-profit organization specializing in consensus-based solutions

to public resource problems.

The purpose of this Conflict Assessment is to evaluate whether a consensus-based negotiation could be convened and if it is likely to be successful in resolving issues about the FINS driving permit system. This conflict assessment is based on information gathered from interviews with fifty-two (52) stakeholders regarding their experience with the current vehicle permit system and their ideas about how it can be improved.

By assessing the situation before deciding how to go about changing the existing driving permit system, the National Park Service and others concerned with the permit system can develop a better understanding of the concerns of the people involved, the substance of the problems and opportunities presented by the situation.

To determine whether a consensus-based negotiation is likely to be successful in resolving issues about the driving permit system at FINS this conflict assessment considers whether the key organizations and individuals concerned with the issue (i.e., "the stakeholders") can be clearly identified, have sufficient overlapping interests, a willingness to work together, and the capacity to negotiate. In our best professional judgment, we conclude that a consensus-based negotiation to improve the current vehicle use regulations and their implementation can be convened and is likely to succeed.

This assessment is not a legal document, technical report, nor an exhaustive study of all those individuals and organizations with a stake in the Seashore's motor vehicle driving permit regulations. The assessment is limited by the information gathered in the interviews we conducted and CBI's interpretation of that information. While it is not feasible to speak to every person with a stake in the driving permit regulations, we hope this assessment accurately captures the full range of views held.

METHODOLOGY

The Assessment is based on confidential, voluntary interviews with fifty-two (52) individuals who hold a range of views on the driving permit regulations. The interviews were conducted from July 9 through August 18, 1999. The vast majority of the interviewees are affiliated with governmental agencies/organizations, advocacy groups, homeowners associations, and other organizations concerned with driving regulations. Almost all interviews were conducted in-person on Fire Island or in Patchogue, New York. Due to scheduling constraints, a few interviews were conducted by telephone.

We spent approximately 45 minutes to one hour talking with each of the interviewees. We explained to each interviewee that their answers would be confidential: particular statements would not be attributed to individuals. We made extensive notes on each interview, and

summarized the interviews for our internal use. We also reviewed various documents provided to us by the Seashore and some of the interviewees. We then compiled comments by stakeholder groups such as year-round residents, local government, off and on-Island contractors, and so forth.

In the interviews, CBI staff asked the interviewees about their views of:

- the current vehicle use regulations including what is and is not working well;
- what changes, if any, should be made to improve the current driving permit system; and,
- after describing the nature of consensus-based negotiation such as the negotiated rulemaking process (also called regulatory negotiation or "reg-neg"), if this kind of process would be an advisable way to revise the driving permit regulations.

Please see the attached interview protocol used by CBI staff as a general guide for conducting the interviews (Attachment A).

The individuals we interviewed were drawn from an extensive stakeholder list. First, FINS prepared a list of potential interviewees across a broad spectrum of interests and residencies. FINS contacted approximately fifty (50) interested individuals and organizations and invited them to participate in an interview. In the interviews, participants identified additional people, many of whom FINS subsequently contacted, to arrange a second round of interviews. In addition, a few individuals who heard about the interviews called FINS directly and requested an interview.

We have organized the individuals and representatives of organizations, agencies, and businesses interviewed in the following stakeholder categories. See the attached list of interviewees, affiliations, and our grouping of these individuals into stakeholder categories (Attachment B).

Stakeholder Groups and Number of Representatives

STAKEHOLDER GROUP	# INTERVIEWED
Fire Island National Seashore	4
West-end towns	
Year-Round Residents	10
Part-Time Residents	7
East-end towns	

Part-Time Residents	5
State, County, & Town Parks	8
Town and County Governments	2
Off-island contractors	2
On-island contractors	2
Essential Services	6
Transport Services	2
Environmental Advocates	2
Other	2
TOTAL	52

Please note, that CBI's role is to provide an accurate, impartial analysis of the situation to assist the NPS and the other stakeholders in determining whether a consensus-based negotiation will meet their objectives. CBI is not an advocate for any particular outcome or interest and conducts its work in a fair, deliberate, and non-partisan fashion. CBI staff are bound by the Society for Professionals in Dispute Resolution's (SPIDR) Code of Ethics: "The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all parties as opposed to a single party."

THE NEGOTIATED RULEMAKING PROCESS

As explained in the interviews, the negotiated rulemaking process is based on the principle that agencies can create better regulations by developing new rules jointly with the people affected by the contemplated rule. Negotiated rulemaking is a consensus-based decisionmaking process. The parties involved in the negotiation agree in advance that they will try to reach an agreement that all the members of the negotiating committee can live with.

When federal agencies, such as the National Park Service use negotiated rulemaking, they must comply with the Federal Advisory Committee Act (FACA) and other legal requirements. If the process results in a consensus whereby the entire negotiating committee concludes that it can live with the new regulation that it has developed, the draft regulation then moves through the standard review, notice and comment procedures. Thus, this consensus-based approach to developing regulations is a supplement to, not a substitute for, the usual federal rulemaking process.

The NPS has used this process once before, at the Cape Cod National Seashore (CCNS.)

In that case, a twenty-three (23) member advisory committee reached consensus on a new rule revising off-road vehicle regulations in six days of negotiation over a period of four months.

ORGANIZATION OF THE THIS CONFLICT ASSESSMENT

This document presents CBI's findings and recommendations. It consists of four sections. Section I outlines the scope of the Conflict Assessment. Section II provides a general description of the current permitting system. Section III details our findings on the situation derived from the interviews. Section IV offers recommendations, given our findings, about how FINS should proceed. Attachments include the names of individuals we interviewed (Attachment A), the questions we used as a general guide for the interviews (Attachment B) and a sample set of groundrules which were used for the Cape Cod National Seashore negotiated rulemaking (Attachment C).

II. DESCRIPTION OF THE SITUATION

The current vehicle use regulations were established in 1987 as part of the original regulations authorizing the Seashore Superintendent to "limit the total number of permits for motor vehicle travel on Seashore lands, and/or to limit the number of permits issued for each category of eligible applicants" The Superintendent of the Fire Island National Seashore is authorized by federal regulation to manage, implement and enforce motor vehicle travel on Fire Island. Federal Regulations governing motor vehicle use on Fire Island (36 CFR 7) date back to 1968 and were amended in 1977 (42 FR 62483), and in 1984.

The existing permit program is outlined in Section (a) (8) of 36 CFR 7.20. This section specifies the limits on vehicle permits and travel for Island residents, governments, businesses and recreational users. Specifically, the regulations establish the following limitations.

- Year-round resident permits will be limited to 145, are good for one year and only one permit per household will be issued.
- Two round trips per day for year-round residents are permitted.
- Part-time resident permits are limited to those who either held year-round or part-time resident permits as of January 1, 1978.
- Permits will be issued for those with retained rights of use and residency proven by deed.
- Public utility and essential service vehicles will be limited to 30 permits per year.
- Construction and business vehicles will be limited to 80 permits at any one time.

- Up to 5 permits for each community for the use of year-round municipal employees will be permitted.
- There is a 5000 trip/year limit on recreational vehicle trips.
- The seashore is closed to recreational vehicle travel from January 1 to March 31 and June 14 to September 14.

The regulations also specify seven permit user groups: Year-Round Residents; Part-Time residents; Reserved Rights of Use and Occupancy; Construction Permits and Business Vehicles; Municipal Employees; and, Recreation Permits.

Year-Round Residential Permits

There are 145 year-round residential vehicle permits. One permit is issued per driver per household. Permits can not be shared within a household or among vehicles. This permit allows two round trips per day from the Monday after Labor Day through the Friday before Memorial Day. If a permit holder desires additional trips, they must obtain permission from the District Ranger. Permits may not be shared nor is succession allowed.

Applicants for a year-round residential permit must show residency and submit an application to the Town of Islip for western district residents or the Town of Brookhaven for eastern district residents. The Seashore issues its permit only after the Town's approval. A year-round resident who is denied a permit because the limit has been reached is placed on a waiting list.

Part-Time Permits

Part-time resident permits are limited to those people who held resident permits as of January 1, 1978. A part-time resident is defined as "those persons who physically and continuously reside in their homes on the island for less than 12 months of the year." There is a limit of 100 part-time resident permits.

Reserved Rights of Use and Occupancy Permits

These permits were issued to residents living in the National Wilderness Area prior to its designation in 1980. Currently, there are no longer any residents in the National Wilderness Area and these permits have been extinguished. Vehicle use is prohibited in the National Wilderness Area.

Public Utility and Essential Service Vehicles

There are 30 permits allocated annually for what are considered essential services, such as electric and telephone services, trash collection, and heating fuel and bottled gas delivery. These permits are issued for a specific period of time on a per vehicle basis. However, electric utility and telephone service companies have been issued a single permit for the entire utility, allowing them to use as many vehicles as necessary.

Construction and Business Vehicles

Generally known as contractor permits, there is a limit of 80 construction and business permits. These permits are issued for either 30 days or one year. Contractors are supposed to use ferry service or other over-water transportation methods for all employees and materials when water transportation is available. The Town of Islip requires that On-Island contractors make no more than two trips per day.

Town Permits in Addition to NPS Permits

In addition to the Seashore and Towns of Islip and Brookhaven, the incorporated towns on Fire Island also issue driving permits. These permits are issued for vehicle use within the jurisdiction of the issuing town.

Modifications within the Regulations

Since the passage of the most current driving permit regulations in 1987, the Park Service, Towns and residents have responded to some driving concerns with additional modifications. For example, the driving season was extended beyond June 14th to accord with the end of the school year (usually in late June). In addition, because some existing permit holders require regular medical treatment and/or appointments due to health conditions, the Park Service has issued special medical permits to allow travel during otherwise restricted periods of time (the summer months, for instance).

III. FINDINGS

This section describes the opinions of interviewees without attribution. CBI has attempted to reflect the opinion, concerns, and interests of stakeholders often using their own words.

We have divided this section into six major issues that were consistently raised by the stakeholders we interviewed, including; Enforcement and Administration; Year-round Permits; Part-time Permits; Contractor Permits; Essential and Emergency Service permits; and Other Issues. We have also included an "Other" category at the end to capture any outstanding findings that do not fit into our prescribed categories.

Each section begins with an "overall comment" which summarizes the different views we heard on the particular issue. Following the summary comment are sub-headings which highlight themes that arose consistently under each major issue. Finally, we have included an "options for improvement" section which outlines suggestions we heard from stakeholders for how the issues might be addressed.

ENFORCEMENT/ADMINISTRATION OF DRIVING PERMITS

All the stakeholders we spoke to mentioned that the enforcement of the current permit system and the administration of the permits could and should be improved. Almost all stakeholders, including NPS, note that enforcing the regulations is a difficult and "thankless" task.

Interviewees do not hold a single view on the enforcement of the current regulations. Some stakeholders believe that the NPS is not enforcing the existing regulations as strictly as they should. These stakeholders cited speeding on the beach and NPS not following up on clear violations at the gate, such as violating the two-trip per day rule or a non-permit holder using a permit holder's card to get through the gate. Stakeholders with these concerns include both full and part-time residents. Other stakeholders, particularly some full-time residents, stated that the NPS has enforced the regulations too rigidly and bureaucratically. These stakeholders cite NPS personnel stopping drivers for minor infractions, requirements to ask permission for extra trips, and the inconvenience and restrictions imposed by the gate known as "check-point Charlie." As one such stakeholder said: "The NPS's enforcement of the resident's coming and going is simply excessive and intrusive." Others mentioned the Piping Plover restrictions (separate from the driving permits), noting instances when essential service vehicles were denied access to portions of Fire Island due to protections for nesting Piping Plovers. From the Park Service's perspective, NPS interviewees noted that they do not want to play the role of "big brother" and that the enforcement of the driving regulations is very difficult and extremely frustrating.

Most stakeholders agree that the regulations are too complex. Some stakeholders mentioned that the complexity of the current regulations and the multiple jurisdictions involved in permitting and policing contributes to the difficulties with enforcement. For instance, it is difficult to monitor the number of trips per day per individual. Some stated that many people don't understand the regulations as written. For example, one common confusion cited by some was whether or not residents were allowed to drive easterly in winter to visit friends in another village but within the confines of FINS. Many interviewees mentioned that the County, town, and NPS approvals needed to obtain a driving permit and the seasonally-changing driving restrictions create too much bureaucracy and often lead to inconsistencies in the rules and their implementation.

Consistency of National Park Service Enforcement

Some stakeholders stated that the NPS enforcement of the current driving rules was inconsistent. To many, the enforcement in the summer season is more consistent and strict as compared to the off-season. A few stakeholders mentioned that the NPS was singling-out a "few bad apples and making them examples to the rest of the Island." Some east-end residents stated that the drivers from some western district towns (i.e., Kismet, Saltaire, etc.) were "given more slack than the more interior and eastern district drivers." One transportation-affiliated interviewee said: "There seems to be three sets of different rules – one for the West End of Fire Island, one for the East End, and one for the Central part of the Island." These stakeholders

stated the drivers from the far-western towns were "often breaking many of the current rules and the NPS was turning the other cheek." Some interviewees noted that vehicles driving in violation of the rules are often ignored by the NPS while at other times the NPS has performed random "spot-checks" to see if vehicles have permits. Generally, we heard ambivalent views about the consistency of enforcement. On the one hand, many full and part-time residents say they want the NPS to enforce the regulations consistently. Yet, these same stakeholders also appreciated when the NPS demonstrated flexibility for "special circumstances" when it applied to them individually.

Some stakeholders mentioned that the NPS does not have adequate support from other authorities to enforce the regulations successfully and consistently. These interviewees stated that the County police presence is insufficient, and in regard to the courts, even when the NPS does issue a fine for a driving violation, "the courts are reluctant to enforce the penalty when it is challenged in court."

Manner of National Park Service Enforcement

Stakeholders had differing views on the manner in which NPS staff enforce the driving regulations. Some stakeholders stated that the NPS has been the "guardian angel" of Fire Island and "without them this place would probably be ruined." Others stated that the NPS has used a "heavy hand controlling the lives of many residents." While most stakeholders expressed that NPS rangers do their best with a difficult job, a few stated the rangers acted like "cops without restraint" rather than "stewards of the Seashore." A few interviewees mentioned that rangers "went for their holsters" when stopping them for a purported violation. A few stakeholders stated that the NPS is "authoritarian and dictatorial" in their enforcement of the vehicle permit system. There was general agreement from most stakeholders that the NPS should "find a balance between enforcement and building relationships with residents."

The West End Gate as an Enforcement Location

Stakeholders expressed a range of views on the west end gate. The gate is seen by many as a necessary and useful mechanism for controlling violators. For some part-time and full-time residents, the system at "the gate allows unobtrusive monitoring and prevents the NPS from unnecessarily stopping vehicles to ensure they have a permit." Many stakeholders stated that the gate has prevented "joy riders" from entering the Seashore illegally.

However, some stakeholders, particularly some full-time residents, stated that the gate acts as an unnecessary "tracking system" on residents' "coming and goings." These stakeholders expressed that the gate was more of a monitoring device than a preventative mechanism and they felt like "big brother" was watching over. A few interviewees noted that the current gate is relatively easily manipulated. Individuals without permits can borrow a pass key, allowing them to enter illegally; multiple vehicles can pass under the gate if done quickly; and, the gate can be bypassed by beach driving.

Inconsistencies and Bureacracy created by Multiple Layers of Government Involvement

The multiple layers of governmental authority involved in the issuance and enforcement of the permits was noted by many stakeholders. Many mentioned that the current permit system requires three layers of governmental oversight, from the Towns (Islip or Brookhaven), the local Fire Island villages, and finally, the NPS. Most stakeholders agree this is cumbersome and often leads to inconsistencies in both the rules and their implementation. Some stakeholders stated that "the local Fire Island villages were contributing to the driving problem by issuing local permits to vehicles that did not hold Town (i.e., Islip or Brookhaven) and Seashore permits." This, according to some, created a situation where a vehicle would be legally allowed to drive within one Island village's but not legally allowed to travel outside that jurisdiction. When people needed to drive outside the local jurisdiction for any reason, they would drive in violation of the NPS permit system.

Stakeholders also mentioned that the Towns of Islip and Brookhaven have different processes for evaluating and issuing vehicle permits. Some stated that while Islip's process is fairly rigorous and "by the book," Brookhaven's process is more lenient. One interviewee noted: "Brookhaven is more lax than Islip. In Brookhaven, you just walk-in, and without wait, get a permit. You pay less too." The result, according to some, was that vehicle permits are easier to obtain in the east-end.

Who Administers and Enforces the Regulations

Some interviewees raised issues regarding who administers the permit system and enforces it. Some full and part-time residents stated that NPS must continue to administer the permits because they are charged with protecting the unique character of the Island and, as a federal rather than local agency, can withstand local political pressures to inappropriately "loosen" driving limitations on the Island. One part-time resident said: "Any thought of NPS not administering the system is frightening." A few suggested that the NPS should take over all permits, and avoid the current multiple-layered system of permits. On the other hand, a few interviewees said that the permitting system should be handed over to one of the Island's incorporated villages. Regarding enforcement, some interviewees suggested that the county police ought to have a more active role in enforcement, perhaps through a service agreement with the NPS. One interviewee said: "NPS should get out of the business of being traffic cops and hand it over to Suffolk County." Others suggested that enforcement responsibilities could be shared between NPS and the County. These interviewees noted that this would relieve the overburdened rangers from such tasks. On the other hand, some interviewees stated that they believe the County Police often violate the regulations, particularly in regard to speed of driving on the beach.

A few interviewees challenged the Park Service's legal right to regulate driving on the Island generally, citing that the federal government can only regulate uses on the Island, not the user, and that the current NPS permit system violates the New York State Public Trust Doctrine which guarantees equal access.

Pricing of Permits

Many residents, especially the year-round residents, object to the rising cost of a vehicle

permit. Some stated that the cost was becoming a burden. Many stakeholders stated that they were not convinced that the fees were actually being used to recover the cost of administering the program as the NPS has stated. They said that the lack of visible enforcement by the NPS was an indication that the monies collected were not being used for administering the system. A few stakeholders stated that they wanted to see a better cost accounting of enforcement by the NPS. The NPS reported that the current fee structure does not fully cover costs of the implementing the permit system.

A few stakeholders said that there should be no permit fees whatsoever, stating that "just as main-land residents are not charged to drive, Fire Island residents should not be charged to drive." Other stakeholders disagreed, stating that Fire Island was a special place where sacrifices needed to be made by residents, including incurring the extra costs for privileges normally taken-for-granted on the mainland. Some residents mentioned that the contractor permit fees should be used to subsidize the residential permits.

Some contractor and non-contractor interviewees were concerned that their permit fees are "becoming excessive, as they have risen dramatically in the past few years." Some interviewees mentioned that this cost is passed on to the customer, placing the burden on residents who must already pay an increased cost for construction services on-Island. Other interviewees, including some contractors, stated that the contractor's permit fees were "manageable" and costs were recoverable through customers. A few interviewees were concerned that contractors were being asked to subsidize the cost of the vehicle permit system for residents.

One interviewee stated that the permit holders should not bear the full costs of the driving system because both drivers and non-drivers benefit from adequate enforcement. This interviewee said: "The permit holders should not be the sole financiers of driving enforcement on the Island. Property owners should collectively pay for such enforcement through some sort of tax."

Driving of Enforcement Vehicles

Of those interviewees who mentioned it, most felt that the NPS was generally respectful of the driving regulations, driving as little as possible and following all speed limits and other restrictions. A few interviewees stated concerns about the Suffolk County and local Police's number of vehicle trips and speed of driving. One interviewee said: "The police are the worst abusers. They are cowboys, driving wherever they want, when they want, as fast as they want."

Options for Improvement

In regards to improving enforcement, were it to remain in NPS's hands, at least in part, interviewees suggested the following ideas:

- Have permits clearly visible on vehicles at all times.
- Permits should be issued to all and a daily cap should be instituted – access would then

be on a first come, first serve basis.

- Permits must provide for the easy identification/determination of those who can drive onto the Island apart from those people who cannot. Some sort of simple identifier, such as, for example, a color-coded, consecutively numbered bumper sticker should be used.
 - Use color-coded permits to distinguish the different permit classifications (e.g., year-round, part-time, contractor, essential service, etc.).
 - Have all contractor vehicles clearly mark their vehicles as contractors.
 - Issue Western and Eastern district permits to ease enforcement for NPS.
 - Enlist Suffolk County Police to aid the NPS in enforcement or have the County Police take over enforcement entirely.
 - Reduce or eliminate permit fees and spread the costs of the program through a broad-based tax.

YEAR-ROUND PERMITS

Almost all the stakeholders we interviewed noted that living on Fire Island year-round is a unique, rewarding, and challenging experience. Most full-time residents acknowledge that living off the mainland requires some sacrifices, including those related to travel. However, full-time residents differ in their views of the degree of sacrifice that is appropriate. While not wholeheartedly supportive of the number of permits that currently exist, almost all interviewees stated that they could live with the current number of year-round, full-time permits. Year-round residents were not in agreement that the current permit system is working fairly well in practice. Some stated that it needed a major overhaul, others stated that enforcement, not the rules, was their chief concern, and yet others said that the system only needed "some tweaking and an upgrade." Many part-time residents stated that the system either has to be better enforced or new regulations written. Most stakeholders stated that the year-round permit system does need codification of at least some of the new rules (i.e., extending the driving season to align with the academic year).

The Number of Permits

Almost all stakeholders we spoke to stated that the current number of permits in circulation was at least acceptable and did not recommend adding or subtracting from the 145 year-round vehicle permits. However, some stakeholders, mostly east-end seasonal residents, recommended that there should be a phasing-out of year-round driving permits. Others noted that some part-time permits might be converted to full-time permits, retaining the total number of permits, but shifting the balance between the number of part and full-time permits allowed. A few interviewees stated the number of "beach driving" permits could remain the same, but additional inland driving permits could be granted.

Two interviewees assert that permits should be eliminated all together. One would phase out driving on Fire Island altogether. The other would allow driving but would scrap the permit system.

Defining Year-round Residency

It is our understanding that year-round residency is generally determined by the Islip Driving Commission through a review of the applicant's driver's license, vehicle registration, insurance statements, electricity bills and itemized phone bills. In addition, the Islip Driving Advisory Commission, comprised of Island year-round residents, assists the Town of Islip in these residency determinations.

Some interviewees stated that the regulations were vague in determining the definition of a year-round resident. Some stated that clauses in the regulations stating that "the year-round residency requirement of twelve months out of the year with only absences of short duration" were being interpreted liberally in some instances, allowing some to have year-round permits at the expense of others with comparable residency claims. According to some stakeholders, the residency requirement was particularly burdensome on new residents who were on the waiting list for a vehicle permit. These residents were required to maintain their year-round residency while waiting for a permit, often "borrowing" rides and making do. Some called this a "Catch-22": in order to get a year-round permit, you have to live on the Island year-round, but it is difficult to live year-round on the Island without a driving permit.

According to some stakeholders, recent investigations by the Town of Islip and its Driving Advisory Commission to determine year-round residency found that only a few existing year-round permit holders were not, in fact, year-round residents. According to administrators of the current system, "only a limited number of applications are denied because the applicants are found not to be year-round residents." A few interviewees did charge that some have misrepresented their circumstances in order to gain a year-round permit. One interviewee said: "People will lie and have friends and family lie for them to get a permit." A few interviewees argued that the unfair and onerous permitting system forces people to lie.

A few interviewees mentioned that local involvement in the residency determinations, on the one hand, ensures accurate conclusions, but on the other, pits neighbor against neighbor. Two interviewees related that people eager to move up on the waiting list will "rat" on existing permit holders to encourage authorities to cancel their permit. NPS interviewees stated that they do not want to be in the business of checking into people's personal lives.

Permit Transferability

Many year-round residents object to the requirement that the permit is issued for only one person and one vehicle. These stakeholders argue that this "put an undue constraint on families, especially those with children of driving age." Some year-round residents noted that the current system unnecessarily prohibited their children or spouse from sharing their existing permit. This, according to some, created problems when both spouses work off island and when children need to drive to extra-curricular school activities, college or work off-island

and need to return home, especially at times with limited or no ferry service. These same residents stated that the current system should allow for permit sharing within a family among the spouse, children and all family vehicles. While some part-time residents expressed sympathy regarding this concern of year-round residents, these seasonal interviewees also raised a general concern about less restrictive transferability rules leading to significantly more and unwanted driving.

The Number of Trips Per Day

The two trips allowed per day in the current regulations was not of major concern to many year-round residential permit holders. Some noted that the Island itself provides a natural barrier to driving. As one island resident said: "Driving on the island is a challenge and not something you do if you do not have to because of the strain it places on your vehicle." However, some year-round residents stated that the trips per day rule was prohibitive, "especially if you have to pick up your kids after school and then want to go to the movies that same night." Many stated that residents living furthest west (i.e., Kismet and Saltaire) often violated this rule because it was easy for those residents to "come and go as they please" because they are geographically close to the Seashore's entrance. Some residents stated that instead of the two trips per day rule, the rule should be changed to a set amount of trips per month or per year. In this proposed arrangement, they argued, "if we need to make four trips in one day but none for the rest of the week thereafter, we still fall within the rules."

Spring and Fall Time Restrictions

Many stakeholders stated that the most controversial time of the year for all drivers, especially year-round residents, was during the brief time periods in the late Spring and early Fall when driving is allowed but also when there are a significant number of seasonal residents and visitors on the island. During this time, according to most year-round residents, "the majority of the conflicts arise between drivers and seasonal residents." Year-round residents cited "looks" from pedestrians. A few interviewees mentioned an instance where a mother driving her children was stopped and surrounded by beachgoers and not allowed to drive forward for several minutes.

Seasonal residents noted that the driving disrupts the special character of the Island, that many drivers are disrespectful of pedestrians, and that some speed and drive carelessly, raising strong safety concerns, with no official available to enforce the rules.

The seasonal driving restrictions were recently changed to align with the school year, allowing driving through almost the end of June. Most year-round residents were supportive of this change although many mentioned that they try to avoid driving in the late spring and early fall to avoid any potential conflicts with seasonal residents. Most year-round residents indicated that the change to allow driving through the end of the school year should be codified

Options for Improvement

Interviewees mentioned several options for addressing the concerns raised:

- Different classifications of permits should be such as a "retiree permit," an "inside-road only permit" and an "over-sand permit."
- Permit applications should be notarized to reduce the instance of intentional misrepresentations.
- Ferry service should be extended for longer hours and more consistent trips in the spring and fall.
- Ferry service could be added to towns that do not currently have service, especially in the off-season.
- A car-pooling system should be established and supported by the NPS.
- A bus or public transit option such as an electric train should be established to reduce trips.
- "Western district" and "eastern district" vehicle permits should be established.
- Establish a provisional permit for six months to a year while new year-round residents can establish residency with their new permit.
- Phase out driving altogether.
- Eliminate permits and remove restrictions on driving.

PART-TIME PERMITS

Many stakeholders stated that the part-time permit system was easier to manage than the year-round system. Some stated the advantages of the part-time system include the simple definition of who is eligible for such permits. However, a few interviewees noted that the disadvantage of these permits is that enforcement is more difficult -- part-time vehicle permit violations were difficult to enforce because the holders of the permit are generally not well known on the island or to the NPS. Some believe that family, and friends of some permit holders take advantage of this anonymity. Some stakeholders stated that it is often difficult or impossible to know if the user of the part-time permit was a full-time resident prior to 1978. A number of stakeholders suggested that some year-round permits could become part-time opening up more full-time permits. However, a few stakeholders stated that there should be a phasing-out of part-time permits altogether. These stakeholders felt that there was no need for part-time or seasonal residents to have the similar driving privileges as year-round residents.

The Number of Part-time Permits

Most stakeholders stated that the 100 part-time driving permits should not be increased or decreased, but kept constant. A few residents expressed a concern that some part-time permits were not being used and could be shifted to those on the waiting list for year-round permits. A few interviewees stated that they either have or would be willing to give up their year-round permit if they could get a part-time permit.

Definition of Part-Time Resident

The general definition of a part-time resident was not a contentious issue for stakeholders. Many stakeholders stated that the definition is clear in the current regulations and should remain. However, some suggested that the "cut-off" period for determining part-time residency should be updated from 1978 to 1985.

Options for Improvement

Interviewees mentioned a few options for altering the current regulations on part-time permits.

- Allow some year-round permit holders who gained permits after 1978 to switch to part-timer permit holders, thereby freeing up more year-round permits, especially for the young adult children of residents.
- Change the pre-1978 residency requirement to 1985 or 1995. Alternatively, establish a "floating" 20 year eligibility period thereby allowing more year-round residents to obtain driving permits.

CONTRACTOR PERMITS

Many stakeholders stated that the contractor permit system causes much of the driving controversy on the island. Several interviewees stated that contractors constitute the majority of vehicle trips on the island during the winter and spring. Some interviewees noted that the contractors had been responsive to the sensitivity of the driving issue by attempting to limit their overall trips to and from the island, to limit their driving on-island and, where possible, to keep equipment stored on the island to prevent additional trips. However, other stakeholders stated that "the contractors were some of the more egregious violators of the system." Some interviewees mentioned that the contractors do not make adequate use of the ferry service when it is available and required, and that the NPS has been lax in enforcing this restriction. One interviewee said: "The current regulations mandate that contractors use the water-bourne transport system services when such services are available. However, the barge business is underused because this mandate is just not enforced." Some year-round residents stated that when an essential service or contractor vehicle caused ill-will with seasonal residents, the blame was often placed on year-round residents.

A few stakeholders stated that the on-island contractors were given privileged access to the

contractor permits while the off-island contractors had to wait, received permits that did not allow a sufficient period of time to complete the work, or were denied permits altogether. However, other stakeholders, especially the on-island contractors, felt that the off-island contractors were given an advantage because "they are not bound by the same driving restrictions as the on-island contractor and can come and go on and off the island as they please."

The Number of Contractor Permits

Most stakeholders, including contractors interviewed, stated that the eighty contractor permits currently available was sufficient. There are currently 80 contractor permits and they are generally all in use, either issued for the year or per contractor job. A few contractors stated that they had trouble obtaining a permit and this "resulted in a competitive advantage for those with permits." However, other stakeholders stated that contractors are rarely denied a permit, stating that "when a contractor is denied a contractor permit, they are almost always compensated by being issued an unused municipality permit." A few stakeholders were concerned that residents were getting contractor permits to work on their own homes. They suggested that contractors should be required to prove that they are legitimate professional contractors by, for example, showing licenses and insurance certificates.

On/Off-Island Contractors

There was a concern by on-island contractors that the off-island contractors have a competitive advantage. They stated that the off-island contractor permit allows the holder to travel on and off the island as many times as they please each day., but the on-island contractor is restricted to the two-trip-per-day limit. The National Park Service noted that the Town of Islip, not NPS, restricts on-Island contractors to two trips per day. A few non-contractor interviewees perceived that the permit system makes it easier for off-Island contractors to obtain permits, and that, preferably, the system would favor on-Island.

Number of Vehicles per Contractor

While contractors interviewed appear to accept the total number of permits, some interviewees stated that contractors need the flexibility to use different or multiple vehicles with their one permit. Many contractors stated that "the same vehicle is often not available everyday and the tools, equipment and personnel needed for a job can change day-to-day." However, other stakeholders stated that contractors do not need multiple vehicles and should be required to use freight ferries or charter boats instead of increasing the number of vehicles.

Options for Improvement

Interviewees noted several potential options for improvement.

- There should be a reserve of permits for east-end contractors because they tend to need them more than west-end contractors.

- All contractors, whether on-island or off-island, should get the same number of daily vehicle trips.
- Contractors should be allowed to use one permit for multiple vehicles owned by the same company to allow flexibility day-to-day.
- Permit sharing should be allowed among contractors.
- Contractors should be required to prove they are legitimate by showing permits, licenses and insurance certificates with their applications.
- Contractors should be given additional staging areas for equipment to prevent unnecessary vehicle trips.
- There should be an increase in freight ferries to accommodate contractor equipment needs and contractors should be required to use them.
- The use of the water barge should be better enforced.
 - There should be provisions in the permits for legitimate construction delays.
 - There should be weekend beach restrictions for contractors during March and April with the increasing use of the beaches during these times.
 - Contractors should be required to clearly mark their vehicle as a contractor and keep driving permit clearly visible at all times.
- Contractors should use more bikes and other simple transport, and do less driving.

ESSENTIAL AND EMERGENCY SERVICE DELIVERY

Many essential service providers expressed concern that some current driving restrictions on the Island have and may, in the future, restrict their ability to provide adequate services. It should be noted that the major concern of these stakeholders is in regard to regulations restricting driving due to the Piping Plover rather than due general FINS driving regulations.

The singular most important issue for essential and emergency service stakeholders is timely and efficient access to Fire Island for essential service delivery and emergency response. Many service providers stated that concerns over the Piping Plover nest sites had restricted their access "to repair homes and get essential services up and running again." For example, one interviewee noted that a transformer was not repaired for several days due to driving restrictions in the area, and consequently, residents were without power. These stakeholders stated that the problem is generally not in the winter season, but in the spring and "during the summer when there are more residents needing services and more storms and other events

that tend to damage essential service delivery systems." These stakeholders agreed that the current rule which allows essential services to use one permit for any number of vehicles was necessary since different vehicles are often needed in different situations. A few stakeholders noted that telephone hookups, repairs, additions for computer connections, and so forth required that Bell Atlantic make more trips to individual homes than other essential services.

Definition of Essential Services

As specified in the current regulations, the electric, gas, fuel, trash removal and telephone utilities are considered essential services. No one disagreed with these as essential services. However, drinking water service is not considered an essential service. A few stakeholders stated that water supply services should be included in the essential service category. These interviews noted that most villages on the Island have turned their systems over to Suffolk County and thus, the County and its contractors need adequate access to keep residents supplied. A few stakeholders stated that water rates were higher on the island because the utility could not get the same essential service access as other utilities.

Town Park Maintenance

Some of the communities, especially those on the east-end, stated that they were restricted from servicing their own beaches and town parks due to vehicle access restrictions, primarily due to the Piping Plover. Most of these stakeholders stated that they only needed limited access to their island property, "primarily in the spring and fall to set up and break-down our facilities." These communities were concerned that if they could not get access to their own property, the cost of maintenance would increase and the facilities might fall into disrepair. A few interviewees noted that when they do not have access from the east end due to Piping Plover restrictions, they must drive almost two hours additional one way, increasing driving on the West End, increasing the number of trips per hours actually worked on the job, and generally prolonging their presence on the Island. Town park maintenance personnel noted driving restrictions put them in a difficult position -- local residents complain to the Town about a piece of park equipment such as a swing needing repair, but the Town is unable to meet the taxpayers demands in a timely manner due to inaccessibility.

Emergency Services

The stakeholders from emergency services stressed that they need to have unlimited vehicle access throughout the year. They stated that their chief concern is when the beach is completely closed to vehicles due to the presence of Piping Plovers. They stated that success or failure in an emergency situation often depends on response time and therefore, these vehicles must not be restricted in emergency response situations. A few interviewees also noted that year-round Island residents who provide emergency assistance need to be permitted such as local Deputy Fire Coordinators.

Carter Services

Stakeholders mentioned the importance of the carter service (trash collection) to Island

residents. A few interviewees raised concern that the carters were "unofficially" also serving as a freight service on return trips to the Island. A few interviewees expressed satisfaction that carters follow the rules and respect the Island because they are members of the Fire Island community, but expressed concern that contractors and essential services employees violate the rules. One suggestion was that carter servicing times be increased until 10:00 AM in the morning and after 4:00 PM at night to meet the community's demand.

Options for Improvement

Interviewees noted several potential options for improvement.

- Include the water utility as an essential service.
- Allow a limited number of vehicle trips for Town beach and park access in spring and fall.
- Stipulate that emergency services have unlimited access, even during the season.
- Provide more staging areas for utilities to reduce the number of vehicle trips.
- Increase freight ferry service for essential services.
- Train more on-island people to provide some essential services and emergency response.
- Allow installation of a lightspan cable through the Sunken Forest to reduce phone company trips.
- Establish a buffer zone between the dunes and the beach for driving to reduce the direct conflict between beachgoers and essential services.
- Reopen the Burma Road along the length of the Island to allow adequate delivery of essential services while protecting the Piping Plover. The road should be stabilized in a way that eliminates/minimizes the road surface's current washboard effect.

OTHER ISSUES

Other issues that arose during the interview process, not as easily categorized as above, are described below.

Ferry Service

Almost all stakeholders stated that the success of the vehicle permit system depended on a

well-functioning ferry system. The vehicle permit system and ferry service are seen by many stakeholders as intimately linked. A reduced need for driving can be accomplished, especially in the winter, by providing more and better ferry service. On the other hand if driving is allowed to increase, the demand for ferry service will decline. As one stakeholder put it: "If the driving regulations are opened up too much, the ferry service would suffer and have to cut-back service, thus leading to even more vehicle trips." There was general agreement from all stakeholders that any process addressing the vehicle permit system can not ignore the central role ferry service plays in the system.

There were specific concerns raised by some stakeholders regarding ferry service, including: ferry service is too infrequent in the off-season for most towns; some towns do not presently have adequate service at any time; freight ferry service needs more support (i.e., financial, docking areas and freight/equipment staging areas); and, east-end ferry service should be improved. Some interviewees note that ferry service must be based on sufficient ridership since the ferries are private businesses. One interviewee said: "Ridership must justify increased ferry service. Increased ferry service does not necessarily result in more riders, only more ferry trips and increased costs." One stakeholder suggested that off-season ferry service could be subsidized with a small dedicated increase in summer season fares.

Municipal Permits

Up to five permits per community are allowed for full-time residents who are full-time employees of the community involved in fire protection, security, building permit supervision, and other municipal services. Generally, there was little comment on municipal permits. However, a few interviewees mentioned that small, unincorporated communities are not able to get sufficient municipal permits for their officials. One interviewee commented: "I am an elected official from one of the small communities. I should be able to get a municipal driving permit to better serve my community. But I can't."

Special Case Scenarios

Some stakeholders stated that the regulations did not reflect the special cases or events that often afflict the island. Some examples of special case scenarios include the times before and after hurricanes and when ferry service is unexpectedly canceled. These stakeholders stated that the current regulations leaves NPS without clear guidance on the extent of its discretion in these special cases. One instance where NPS had enforced the rules in a special circumstance was related by an interviewee. A winter party on-island was attended by off-islanders who were stranded when a storm shut down ferry service. The host was fined when he was caught driving the guests back to the mainland. One stakeholder suggested that the regulations probably needed to "include a clause that allowed vehicle access for all island residents during certain special cases, which we should define."

Recreation Permits

Most stakeholders did not address the recreational permit issue nor did they express a concern over these rules. However, some stakeholders, especially east-end residents, wondered why a

recreational vehicle (i.e., for fishing or buggy riding) was not regulated with the same scrutiny as other vehicles.

ACOE/Beach Replenishment

Some stakeholders were concerned that a current beach restoration project involving the Army Corps of Engineers (ACOE) would negatively affect driving. Their primary concern was that beach driving restrictions during certain events and tidal conditions could be affected. Some stakeholders stated that this project, when complete, might offer some relief to drivers requiring beach access. Some interviewees expressed a general concern about being able to move forward with various replenishment projects in order to protect Fire Island and the southern shore of Long Island.

Master Planning and Equal Access to the Park

A few stakeholders stated that the original master plan for Fire Island was intended to provide recreation space for the residents of New York. These stakeholders claimed the NPS should not be regulating uses that interfere with recreation on the island, including driving. These same stakeholders stated that the current master plan for Fire Island National Seashore "makes very little mention of vehicles and how they will or will not be incorporated into the park's future." These stakeholders stated that "the courts have an obligation to provide free and open access to public lands." These stakeholders also claimed that if the courts are going to restrict access to some, they need to apply the rules equally to all, "or else issues of discrimination under the law arise

SUMMARY OF FINDINGS

Based on the findings from our interviews, we summarize below the six key issues that, in our view, constitute the bulk of dissatisfaction with the current vehicle permitting system.

Administration of the Vehicle Permitting System

We heard numerous concerns that the administration of the current permit system is overly bureaucratic, complicated, costly, and burdensome to both the permit holders and the administrators, be that because of the involvement of multiple government entities in permit-granting and enforcement, the numerous categories of permit holders, and/or because of the determinations required for year-round and part-time residency.

Consistent and Fair Enforcement of the Vehicle Permitting System

Most stakeholders believe that any permit system, either the existing one or as it might be modified in the future, must be fairly and adequately enforced. Some stakeholders stated that enforcement of the current regulations was too strict and "by-the-book" (as were the regulations themselves) while others claimed that the regulations were adequate but

enforcement was lax. Potential areas of disagreement exist over whether the gate should continue to operate in its present capacity, what kind of "patrol" would be sufficient and who would patrol, and what additional, if any, enforcement mechanisms are needed.

The Needs of Year-Round Families

Many year-round residents believe that the current system places excessive burdens on families on the Island. Specifically, many year-round residents stressed that the system's inability to accommodate children and spouses working or in school off-island. Others believe that the restrictions are necessary to maintain the unique character of Fire Island and that those who choose to live year-round must make sacrifices to do so. All agree that a careful balance between families needs and the Island's character is important to achieve.

The Allocation of Year-Round and Part-Time Resident Permits

Some stakeholders stated that the part-time system could be updated to reflect the current demographics on Fire Island. These stakeholders stated that the pre-1978 residency requirement was out-dated and that the 1978 cut-off date rule should be shifted to the mid-1980's or even 1990's. One objective of these stakeholders is to open-up more part-time permits to long-time residents and thereby freeing up year-round permits for new residents, all while not increasing the overall vehicle permits cap. However, this process will require a significant change in the part-time permit system and could, according to some residents, add vehicles to the island even while keeping the overall number of permits the same. Alterations to the current part-time permit system will likely aggravate seasonal residents who hold permits.

Contractor Permits

The rules governing contractors are controversial among both year-round and seasonal residents. Some residents stated that there are too many contractors driving on the Island, they violate the driving rules and agitate seasonal residents, particularly during sensitive time periods in the spring. By contrast, other residents and contractors by state that contractors provide a necessary service, pay the highest fees for their permits and seek to abide by all the rules. There was significant disagreement over whether or not the current system favors on or off-island contractors. Some interviewees stated that on-island contractors were at a disadvantage to their off-island competitors because their daily trips were restricted. However, others stated that off-island contractors are at a disadvantage because on-islanders are often given priority for permits. Consumers are concerned that undue driving restrictions on contractors could increase the already high cost of construction and renovation on the Island.

Providing Essential Services while Protecting Endangered Species

There was general agreement that protection of endangered species on the island, specifically the Piping Plover, was important, or at least required by law. However, residents in both the eastern and western districts along with essential service deliverers and emergency response personnel note that Piping Plover restrictions decrease access, increase the response time and costs of services, and displace driving onto the West End. While important to some

interviewees, it is our understanding that the Piping Plover restrictions, pursuant to the Endangered Species Act, are outside the scope of the FINS driving regulations.

IV. RECOMMENDATIONS

In deciding whether to proceed with a negotiated rulemaking to revise motor vehicle use regulations for Fire Island National Seashore, the National Park Service and the other organizations and individuals concerned with driving on Fire Island should consider two key questions:

1. Are the people most concerned with driving permit system at Fire Island National Seashore (the "stakeholders") willing and able to join a negotiating committee to develop a consensus about how to improve the system?
2. If the stakeholders are willing and able to work together on a negotiating committee to develop a consensus about improving the permits system, is it reasonably likely that they will be able to reach consensus on all or almost all key issues with the time and resources available? In short, is a negotiated rulemaking likely to succeed?

In the judgment of the conflict assessment team, the answer to both of these questions is a qualified "yes." CBI recommends that a consensus-based negotiated rulemaking is likely to be a fruitful process for revising and improving the driving permit system for Fire Island National Seashore. Following are the conflict assessment team's evaluation of these two questions, and our recommendations for next steps.

Willingness and Capacity of the Stakeholders to Participate in a Negotiated Rulemaking

For an important and controversial public issue such as this to be resolved with a consensus-based decisionmaking process, it is necessary to determine if the variety of community perspectives can be represented by a reasonable number of individuals willing to accept special responsibilities. Obviously, it is not practical for all the people concerned with driving permit issues to sit on such a committee. Thus, the negotiating committee would be made up of members who belong to organizations and/or can represent defined constituencies, which in turn, can be grouped into broad stakeholder groups.

Through our interviews, we identified several distinguishable key stakeholder groups, most of which have organizations that could represent them in a negotiated rulemaking. By stakeholders we mean broader groupings of people and their affiliations by interest, geography, or other factors.

The broad stakeholder groups we identified include:

- The National Park Service
- West End residents
- East End residents
- Year-round residents
- Seasonal residents
- Town and State Parks
- County Governments, including driving permit regulators and police protection
- Essential services, including, as we define them, electricity, phone, and emergency services (fire, ambulance, paramedics)
- On-Island Contractors
- Off-Island Contractors
- Transport services, including ferries, barges, and carters
- Environmental advocates

Almost all these stakeholder groups are reasonably well-defined, are organized, and could be represented by one or more organizations. It should be noted that some people have multiple affiliations and through those affiliations might represent more than one stakeholder group. A few stakeholder groups (in particular, off-Island contractors) are not as "well defined" and thus credible, acceptable representatives of these stakeholder groups may be more difficult to identify. On the negotiating committee, in addition, Island residents from both incorporated and unincorporated villages would need to be included.

In our interviews, we heard that most stakeholders would be willing to sit down and work with one another to improve the existing regulations (as well as their implementation in such areas as enforcement). We also noted that there was a general willingness to devote the substantial time required to prepare for and attend meetings and consult regularly with constituents. Equally important, we heard that the people interested in participating in a possible negotiated rulemaking recognized that success would require creativity and willingness to listen to one another in an effort to jointly solve the problems at hand.

In summary, there is sufficient interest and capacity among likely participants for the NPS to convene an effective broadly representative negotiating committee.

Likelihood that a Negotiated Rulemaking Will be Successful

Given the willingness and capacity of the stakeholders in the community to participate in a negotiated rulemaking the question becomes "is it worth a try?" Regulatory negotiations, like other consensus-based decisionmaking processes require a large investment of time and effort by all those involved. A poorly designed or ill-conceived negotiation can be a waste of resources leaving participants frustrated, angry, and without a satisfying outcome. Therefore it is wise to carefully consider the likelihood of success before undertaking the process .

The highest level of success in a negotiated rulemaking would be a consensus on the full content for a complete set of driving permit regulations. In turn, the NPS would promulgate

detailed regulations, without dispute. Other less tangible, benefits of consensus-based negotiations might also result. Aside from whether the negotiators reach full agreement on the issues, the time invested in respectful communication may result in better relationships and greater appreciation for one another's perspectives. This can lead to a stronger community and an increased capacity to work together on other common goals.

In two previous conflict assessments at other locations, staff now part of CBI's Fire Island assessment team advised the parties that a negotiated rulemaking was not likely to succeed under the then-current circumstances. Here, however, the prospects are brighter. We believe that if the NPS convenes a negotiated rulemaking to develop improvement to the driving permit system, the effort is likely to succeed.

Indicators of Success

Why does CBI conclude that a negotiated rulemaking is likely to succeed? While there are real and substantial differences in the goals and positions of the interested parties, we recognize sufficient overlapping interests to make a regulatory negotiation likely to be fruitful.

First, as described above, the stakeholders are reasonably well-defined and can be represented by organizations many of whom have already expressed a willingness to come to the table. Second, the issues are reasonable well-defined: negotiations would take place to revise and improve driving permit regulations as well as discuss enforcement and implementation of such regulations. The stakeholders experience with the current regulations would provide a wealth of data to draw from in crafting improvements. The negotiators would not be starting from scratch, but building on the successes and limitations of existing regulations.

Third, although stakeholders hold a range of views on many issues, there are several shared interests and views that enhance the possibility that consensus can be achieved. For instance, almost all interviewees noted that Fire Island is a special place that has remained unique, in part, due to limited vehicle use. No one we interviewed suggested that Fire Island's general character should change though some people feel that the desirable characteristics can be preserved even with increased driving. . This strong shared appreciation for Fire Island's uniqueness is likely to help all stakeholders effectively and constructively resolve their disagreements. In addition, almost all parties including the National Park Service, agree that the current driving regulations are complex, confusing, difficult to enforce, less than ideal, and could be improved.

Fourth, the interviewees who expressed an interest in participating in a regulatory negotiation indicated a willingness to work within the typical groundrules of this kind of process including: the consensus "decision rule" that there is no agreement unless all negotiators can live with the agreement; that if there is a consensus and the Park Service promulgates new regulations based on that consensus, they will support the proposed rule and that if a proposed element of an agreement is not acceptable to them, they will try to develop an alternative that works for them as well as the other negotiators.

Fifth, our interviews suggest there is a history at Fire Island of stakeholders working together

to address issues and a willingness to strive to balance the needs of numerous and sometimes divergent interests. In our interviews we heard such statements as, "We need to find a way to carefully balance the needs of year-round and seasonal residents" and "We have worked with the Park Service for years to resolve issues and move forward." In addition, stakeholders expressed a willingness to consider a range of options for solving one problem or another. This suggests that stakeholders are not merely "stuck" in their positions, but are able to imagine options for solving the identified problems.

Moreover, there are no significant time pressures that might make it impossible to achieve agreement within a too limited timeframe.

Obstacles to Success

Of course, if the effort is undertaken, success in this regulatory negotiations cannot be guaranteed. There will be difficulties and obstacles to reaching agreement on a revised set of regulations.

First, the ideal outcomes of certain parties are different, and in some cases, mutually inconsistent. At one end of the spectrum, for instance, a few stakeholders would prefer no driving on the Island whatsoever. On the other end, a few others would prefer no regulations on driving whatsoever.

Second, stakeholders do hold different views and interests in regard to driving on Fire Island. For instance, long-standing year-round residents are concerned about their children as young adults being able to drive, while many seasonal residents are very concerned about any increase in driving, for whatever reason. Some believe regulations should be more strictly enforced while others believe the current regulations are already too strictly and rigidly enforced. All parties want consistency and fairness in the regulations generally, and yet want the regulations to be implemented reasonably and practically with some flexibility when applied to them personally.

Third, the FINS has a limited budget and thus, financial constraints could limit the possible options for improving enforcement of the regulations, whatever they may be. Fourth, it appears that restrictions flowing from protections for the Piping Plover, a cause of major concern to many, are most likely a non-negotiable issue.

Last, we should note that some interviewees expressed reservations about a regulatory negotiation, noting that the regulations function adequately as they are, and that perhaps the Park Service should focus more on improving enforcement of existing regulations rather than revising the regulations themselves. Also, one interviewee expressed strong skepticism about the negotiated rulemaking characterizing consensus-based processes as a "tyranny of the minority."

RECOMMENDED ACTIONS

Based on the information available to us at this time, the conflict assessment team recommends that the NPS convene a regulatory negotiation. In order to ensure a successful process, we offer the following additional recommendations.

Determine the Purpose of the Regulatory Negotiation

Of course, the NPS should clearly define the purpose of and topics to be addressed in the regulatory negotiation. We suggest that the purpose might be stated as follows: the purpose of this regulatory negotiation is to develop new Fire Island National Seashore motor vehicle use regulations supported by all key stakeholder groups that are understandable, enforceable, and preserve the unique character of Fire Island for current residents and visitors as well as for future generations. In addition, the committee should hold discussions on enforcement and implementation of these regulations.

In terms of specific objectives, we recommend that the negotiating committee, if convened, seek to develop a Memorandum of Understanding (MOU) that will *describe the agreed-upon content of each section of the regulations*. If consensus is reached on the MOU, it will be used by the NPS for the drafting of proposed regulations. An MOU is more attainable than language "ready for promulgation" given the time and logistical constraints of multi-party negotiations and the complexities of drafting formal regulations. In light of this recommendation, it is important that the negotiating group review the consensus-based draft regulations, once generated by NPS, for consistency with the MOU. Disagreements about consistency would be settled by consultations with the negotiating committee and, if necessary, reconvening the negotiating committee to work out any inconsistencies.

Once the regulations have been drafted by NPS and reviewed by the negotiating committee, they would enter the formal and required federal process for promulgating regulations. It is important to note that the consensus building steps recommended here are not a substitute for the formal rulemaking process prescribed in federal law. Instead, the regulatory negotiation is a supplement to the standard process. Experience around the country demonstrates that effective consensus building allows stakeholders to work through their differences before a new regulation is proposed, resulting in quicker and less contentious promulgation, as well as fewer, if any, challenges in the courts.

Clarify the Alternatives to a Negotiated Rulemaking

In order to provide for a structured, clearly defined negotiation process, the National Park Service should clarify for itself and all stakeholders the alternatives to a negotiated rulemaking process should the committee's efforts to reach agreement fall short of full consensus. For instance, the NPS might determine that if a committee cannot reach consensus on a revised and improved set of regulations, the existing regulations will remain in effect. Or, alternatively, the NPS might determine that if a negotiation committee cannot reach agreement, NPS will move forward to promulgate new regulations in any case. Whatever the alternatives to agreement, the NPS should be as clear as they can be about these alternatives.

Identify and Communicate any Non-Negotiable Issues

The NPS should identify any issues that they believe are non-negotiable, either because they do not have regulatory jurisdiction or because current rules and regulations do not permit them from addressing one or more issues.

Through our interviews, we have identified one issue that is important to a range of stakeholders, but that is likely to be non-negotiable: driving restrictions related to protecting the Piping Plover. It is our understanding the Endangered Species Act, is quite restrictive in these matters, that the regulations are under the authority of the U.S. Fish and Wildlife Service, and that current NPS driving regulations are separate and distinct from driving restrictions imposed because of the Piping Plover. Prior to beginning negotiations, or as part of the beginning of the process, this issue and the negotiation constraints this places (or does not place) on the committee should be clear.

However, it should be noted, that options for mitigating the related restrictions such as increased or altered ferry service, number of vehicles or trips per day for specific, seasonal work, etc. might still be considered part of the regulatory negotiation.

In addition, the issue of recreational driving regulations was mentioned by some of the people we interviewed but was not identified as a critical issue. The NPS indicated that it does not intend to include recreational driving regulations in these negotiations and is not planning any changes to those regulations. However, if recreational driving rules are included in this negotiated rulemaking there are other stakeholders, not included in our conflict assessment who should be involved.

Strive for a practical, balanced, and inclusive membership

If the NPS convenes a negotiated rulemaking committee, we recommend that, within the limits of the Federal Advisory Committee Act (FACA), they strive for a practical, balanced and inclusive membership on the committee using a transparent and credible selection process.

We recommend that the negotiated rulemaking committee **be of a manageable size**: approximately 20 members represented by that many individuals. If the committee is much smaller, it will not likely be inclusive of all key stakeholders. If the committee is much larger, its operations will likely become unwieldy, inefficient, and will likely frustrate the effort to reach consensus.

The committee's **membership should be balanced**. This means that the committee should reflect the range and diversity of views held on the issues and should be representatives of those with a stake in the regulations. Although we have sought to identify key stakeholder groups above, we have not attempted to suggest exactly what number of negotiators ought to be offered to each stakeholder group.

The committee's **proceedings should be inclusive**. This means that the negotiated rulemaking should be a public process that effectively involves those with a stake in the issues. First, we have recommended that the committee have approximately 20 or so members so that a range of views can be represented. Second, we recommend that alternates as well as principles be

appointed. Only the principal would sit at the negotiating table but if unable to attend a session, the alternate would take that seat. However, even when the principal attends, the alternate would be welcome in room and the principal could call for a caucus as needed to confer with the alternate or to confer with others. Third, we recommend that the meetings of the negotiated rulemaking committee should be open to the public and the press. Fourth, we recommend that a public comment period be incorporated in the agenda of the reg-neg meetings so that any member of the public may address the committee during its proceedings. Last, the members of the negotiated rulemaking committee might organize meetings for its constituents or the general public to discuss the topics under negotiation and/or the committee might select to organize a special public meeting, for example, to present a draft agreement.

The selection process for membership on the negotiated rulemaking committee **should be transparent**. The NPS should work to actively include stakeholders in the membership selection process through consultations with stakeholders

Develop Effective Groundrules

A negotiating committee will need clear, effective, and fair groundrules to ensure smooth and efficient operations, full opportunities for participation by all members, full consideration of ideas and alternatives, clear decisionmaking, and civil, respectful behavior.

Several of the key elements of typical regulatory negotiation groundrules are : (1) members of the negotiating committee are individuals who can represent organizations and/or constituencies; (2) alternates are selected to represent stakeholder groups in the case a member cannot attend; (3) the committee operates by consensus, which is defined as the absence of dissent; (4) agreements reached during the course of negotiations are considered tentative until a complete package is reviewed at the end for a possible final consensus; (5) members agree to act with a modicum of civility and courtesy; (6) the process is a supplement to, not a substitute for the standard regulatory review and comment procedures; (7) the meetings of the committee are open to the public; (8) committee members may request caucuses for the purpose of consultations as needed: and, (9) the mediators serve at the discretion of the committee.

The groundrules from the Cape Cod National Seashore negotiated rulemaking (called "organizational protocols" in that case) are attached (Attachment C).

Utilize Consensus for Decisionmaking

In our judgment, a consensus "decision rule" would best serve the interests of all the stakeholders in developing a widely acceptable and long-lasting agreement.

Why use consensus? Consensus can ensure that all stakeholders have the opportunity to voice their concerns and to meet their interests. Consensus requires that all parties strive to invent

options and continue discussion until solutions are devised that everyone can, at the least, live with. Consensus ensures that a minority of stakeholders is not left "out in the cold." In our interviews, for instance, some interviewees expressed concern that if the regulatory negotiation used a simply majority voting rule, they might be "outvoted." This is of particular concern to stakeholders who are a small numerical minority of the total number of people concerned with driving regulations. However, consensus not only provides the "right" to say, "No, I cannot live with that," it is also a responsibility. If one or more participants says no, they have a responsibility to work with the other parties to invent options and develop alternatives that they and others can live with.

Consensus is likely to produce more durable, stable outcomes because the process ensures that all participants' interests are addressed, at least to an acceptable if not perfect degree. Thus, it is less likely that there will be frustrated minorities motivated to scuttle an agreement. This may be particularly important in the case of driving regulations, because at least to some degree, they have to be self-enforcing given the limits of enforcement. Lastly, by employing consensus, groups do not have to be as worried about exactly how many representatives they have on the committee. As long as they are represented on the committee by individuals who can articulate their perspectives and work collaboratively with the other committee members, their interests will have to be addressed by the very nature of consensus. This avoids attempts to "stack the membership deck" and bypasses often contentious and painful battles over representation, membership, and fairness.

Retain a Mediation Team

Negotiation committees are likely to encounter difficulties in arriving at consensus: misunderstandings, personalities, complex group dynamics, and differing interests will pose challenges. Mediators can assist such negotiating committees in overcoming these obstacles. A mediation team would undertake such tasks as: (1) formulating the agenda for all meetings of the negotiated rulemaking committee and facilitating the proceedings; (2) conducting or coordinating any joint fact-finding required by the group; (3) preparing single text drafts between meetings to serve as a basis for deliberations; (4) assisting in building consensus among the parties with regard to its findings; (5) ensuring compliance with agreed upon groundrules; and, (6) advocating for a fair, effective, and credible process, while remaining utterly nonpartisan with respect to the outcome of the deliberations.

RECOMMENDED NEXT STEPS

We recommend the following next steps for initiating a regulatory negotiation are:

- Interviewees give feedback to CBI on this draft Conflict Assessment.
- CBI revises the Conflict Assessment and disseminates the final document to interviewees.
- The National Park Services, in consultation with other stakeholders, decides whether to proceed with a regulatory negotiation.

- If the NPS decides to move forward, the NPS convenes the negotiating committee by determining, in consultation with other stakeholders, who to appoint to the committee. NPS also pursues the other convening steps described above such as clarifying the topics to be negotiated.
- The negotiating rulemaking committee meets to begin work.
- In its first meeting, the Committee agrees on groundrules of operation and a workplan for guiding its deliberations.
- Negotiations proceed.

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