

## MEETING SUMMARY

### FIRE ISLAND NATIONAL SEASHORE OFF-ROAD DRIVING REGULATIONS NEGOTIATED RULEMAKING ADVISORY COMMITTEE

#### SESSION I

JUNE 28 - 29, 2002

Dowling College, Brookhaven, New York

**Attendees:** See attached attendance list of Principal Representatives, Alternates, Technical Advisors, and individuals who provided public comment.

#### **Welcome by the National Park Service/ Introduction of Mediators, Principal Representatives, Alternates, and Resource People**

The first session of the Fire Island National Seashore Off-Road Driving Regulations Negotiated Rulemaking Advisory Committee began at approximately 9:15 AM with opening remarks by Fire Island National Seashore Superintendent Constantine Dillon, followed by brief self-introductions of the Committee's mediators, principal representatives, alternates and resource people.

#### **Review, Discussion, and Approval of Draft Groundrules**

The Negotiated Rulemaking Advisory Committee for Off-Road Driving Regulations ("The Committee") reviewed, discussed, and approved by consensus the Draft Groundrules as presented. The following issues arose and/or clarifications were made during the groundrules discussion:

- Regarding the relationship between the Principal and Alternate, if the Principal is absent, the Alternate has the full authority of the Principal Representative. When both are attending a Committee session and the Principal is at the table, the Alternate must communicate through the Principal.
- Recreational Driving (for hunting and fishing) is not included in the mission of the Committee and will be addressed in the regulations by the NPS separately from this negotiated rulemaking. Stakeholder representatives concerned with recreational driving have been appointed as technical advisors of the Committee.
- NPS will perform an Environmental Assessment (EA) concurrently with the Negotiated Rulemaking process in order to identify significant environmental issues that arise during these negotiations. The U.S. Fish and Wildlife Service (FWS) as well as Park technical staff will be on hand during the negotiations to raise potential EA issues related to proposals considered by the Committee.
- Consensus agreements reached during the negotiations will be considered tentative until representatives agree to make them final agreements. This allows the Committee to agree on

issues with the Consensus Agreement becoming final only after a package of agreements is reached. However, when the Committee reaches consensus on the groundrules, that agreement will be final so the Committee may use the groundrules as the operating procedures for its work going forward.

- Any final consensus reached by the Committee will be described in a Consensus Agreement. The Consensus Agreement will be used by the National Park Service (NPS) as the basis for drafting its proposed rule. Then the NPS will circulate the draft proposed rule to the Committee to check for consistency with the Consensus Agreement. After working out any differences and the Committee concurs that the proposed rule language is consistent with the Consensus Agreement, the NPS will proceed with formal rulemaking including publishing the proposed rule in the Federal Register. Committee member organizations and Committee representatives will refrain from commenting negatively on the consensus-based regulatory language during the rulemaking and associated processes.
- If consensus is not reached by the Committee through this process, the NPS will proceed with rulemaking for off-road vehicle driving regulations. Even if the group does not reach consensus, the work of the Committee will inform the NPS rulemaking.

### **Committee Participation**

The Committee discussed membership issues, including additions and changes of Principal Representatives, Alternates, and Technical Advisors. Technical Advisors may be added by consensus of the Committee. They provide information and advise but do not participate in Committee decisions. Any nominations for new Primary Representatives and Alternates must be made expeditiously as formal appointments to the Committee are made by the Secretary of the Interior. Such people who are added may serve provisionally on the Committee but cannot partake in Committee consensus decisionmaking until appointed by the Secretary of the Interior. Nominations for new or substitute representatives should be submitted to NPS by Monday, July 8, 2002. The following specific stakeholders were discussed.

- The Robert Moses State Park (State Office of Parks, Recreation and Historical Preservation) had been invited by NPS to be a Committee Member and instead agreed to serve as a Technical Advisor. After discussing whether the state park should be a regular member of the Committee it was agreed by consensus that they will continue as a Technical Advisor
- The Committee reached consensus to invite as Technical Advisors to the Committee the U.S. Fish and Wildlife Service (FWS).
- The Suffolk County Police Department (SCPD) intends to replace its Principal representative Deputy Inspector Harold Jantzen with current Alternate representative Captain Bill Read and add SCPD Attorney Brian Cassidy as the Alternate.
- On-Island Contractors will seek an Alternate.
- Village of Saltaire will submit a nomination for a substitute Alternate due to the current alternate not being able to participate.
- No Alternate is currently listed for the following Stakeholder Groups: Visitors, Utility Companies,

Fire Island Fire Chiefs Council, Off-Island Contractors, Year-Round and Seasonal Residents and the Village of Ocean Beach.

- The Committee reached consensus to invite as Technical Advisors to the Committee one or two persons from the County Executive's Office, including a recommendation that the County Attorney Office be one of the Technical Advisors. The group agreed that, if the County is willing to participate as Technical Advisor, the County should make its own decision who they want to serve in that role.

### **Constituency Statements**

It was agreed that negotiators will draft Constituency Statements describing their constituencies and explaining through what means and how frequently they intend to get input from and report back to their constituencies. (Note From the Mediators: One Constituency Statement will be prepared for each stakeholder group so member organizations/stakeholder groups that have a Principal and Alternate representative may have a single Constituency Statement prepared jointly by the two representatives.)

### **Opening Comments by Representatives**

Each Committee Representative at the table provided introductory comments, which included the following points:

#### *Traffic Reduction*

- Waterborne transportation should be the primary means of service to Fire Island.
- Driving on Fire Island should be the exception, not the rule.
- Everything that can go by water to Fire Island should.
- Everything that can move by water around the Island should, particularly from early spring through late fall, not only in summer.

#### *Enforcement of Regulations*

- The existing regulations are imperfect but manageable. Their enforcement, however, is the cause of increased and unacceptable driving.
- Problems with the current regulations could be cured through better enforcement.
- The current rules are not enforceable.
- Enforcement is less consistent now than in the past.
- Enforcement of current regulations is inconsistent and unfair.
- Enforcement is particularly unfair to summer residents.
- Some emergency services abuse their exemption.

#### *Other Considerations for Developing New Regulations*

- Regulations must be clear, straightforward, concrete and enforced.
- The Committee should consider a means by which permits can be obtained by the children of year-round residents who wish to reside on the Island as adults.

- Current regulations are unequal between the different groups of drivers, especially between the west end and east end villages.
- Watercraft and aircraft for medical evacuations should be exempted from restrictions on beach driving. Regulations should also consider the training needs of emergency personnel in addition to emergency response.
- Additional essential service providers need vehicular access to the beach.
- Regulations should be interpreted consistently among the various permit-issuing entities (i.e. Towns of Islip and Brookhaven, Villages of Saltaire and Ocean Beach, NPS).
- Communities were intended to be exempt from the National Seashore once they met appropriate zoning codes (the NPS stated their view that this exemption was only relative to land use and condemnation).
- Permit fee increases are higher than what is necessary to recover costs.
- Fire Island contains the only federal wilderness area in New York State. While new regulations will not allow driving in the wilderness area, they may affect it and this must be taken in consideration in redrafting.
- The Committee must take care to recognize that the lives and livelihoods of people are governed by the regulations.

### **Public Comment**

Laurie Farber, Conservation Chair of the Long Island Sierra Club, asked that the Committee include the following considerations when drafting the new regulations: (1) Phase out all driving on Fire Island eastward of Watch Hill; (2) Consider geologic and aesthetic impacts, including a review of historical geological studies; (3) Issue permits not to individual persons, but to a particular vehicle (e.g. a family vehicle) to reduce the number of trips.

### **Relevant Federal Statutes, Regulations, Policies and Guidelines**

#### Presentation by NPS

The NPS provided an introduction to off-road driving issues at Fire Island National Seashore. The presentation included an overview of the purpose of the park, increasing visitation, level funding, the Island communities, and unique characteristics of Fire Island as well as executive orders, laws, and policies within which off-road driving must be regulated.

NPS explained that federal (NPS) management of driving is guided by the following factors: (1) Legislated purpose of the park; (2) Legislated role relative to the communities; (3) Protection of park resources; (4) Protection of visitor safety and enjoyment; (5) Practical ability to manage driving; and (6) Laws, regulations, executive orders and policies relative to driving within the park, including: Title 16 U.S. Code Sec. 459e (Fire Island National Seashore Act as amended); Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands); and, NPS Management Policies; and each document was provided to Committee representatives.

Off-road vehicles use is allowed only when consistent with the purpose for which the park was established and when the use will not adversely affect the park's natural, aesthetic or scenic values. Off-road vehicles are prohibited unless explicitly allowed and are not allowed if they cause significant negative environmental impacts.

#### *Community Exemption*

Communities were exempt from condemnation if they had zoning in place and the zoning was approved by the Secretary of the Interior. Some Committee representatives stated that they believed this made these communities exempt from NPS regulation. NPS stated that all other regulations do apply across the Park regardless of land ownership.

While the State of New York used to own all property rights for the land seaward of the mean high water mark, the state has deeded its rights of use and occupancy to the federal government.

*The Burma Road*

Whether or not a path travelled by vehicles is a designated "road" is an important question with regard to the regulations, the NPS stated. For example, the Burma Road as a whole is not designated a "road" but a route within the meaning of the current regulations (36 CFR 7.20), and therefore its use constitutes "off-road driving" which falls under the regulations. However, in 1991, U.S. Department of Transportation (DOT) funds were used to improve the Burma Road between Robert Moses State Park and the Kismet Firehouse. According to federal law this portion of the Burma Road is now a "road." However, it was not a considered a road at the time the current regulations were written in 1987, as the work was done subsequently to the roadwork. NPS does not have any plans to request additional DOT funds for the Burma Road.

It was noted that other inconsistencies now exist between the current driving regulations and other federal laws and regulations. For example, since no vehicle can be driven off-road unless specifically provided for in the regulations, there is presently no legal means of driving outside of the off-road vehicle routes designated in the 1987 regulation. It is important that this Committee's recommendations be clear about the distinctions between road and off-road designations.

*Jurisdiction/Enforcement*

There are off-road vehicle permit-issuing entities on Fire Island in addition to the NPS, including the Towns of Islip and Brookhaven, whose permits are enforced by the Suffolk County Police Department (SCPD). Moreover, since state motor vehicle laws apply on federal lands, drivers are under the jurisdiction of the SCPD island-wide. The Villages of Ocean Beach and Saltaire also issue permits with enforcement power held by the Ocean Beach Police and Saltaire Security, respectively. The NPS noted that its priorities for enforcement of its regulations are actions that impact the resource and visitor safety.

**Status of Current Driving Regulations and Driving on the Island**

The NPS presented information on the current number and kinds of vehicles, number of vehicle trips, seasonal restrictions and other information as follows:

**Historical Usage**

Number of vehicle passes at both East (Ranger) and West (Key Pad Gate) Entrances, including NPS vehicle passes (1986-1989 not available)

2001: 57,189	1996: 20,000	1991: 39,000	1982: 44,000
2000: 58,549	1995: 29,000	1990: 41,000**	1981: 40,000

1999: 54,690	1994: 30,000	1985: 34,000	1980: 46,000
1998: 40,999	1993: 76,000*	1984: 34,000	1979: 11,000
1997: 29,000	1992: 33,000	1983: 45,000	1978: 12,000

\* Reflects the increase in contractor traffic due to major storm damage in 1991 and 1992.

\*\*An electronic gate was installed in 1990. Prior to this, NPS staff counted vehicle traffic manually. There is not necessarily a full correlation between pre- and post-1990 figures.

**Number of Permits by Type**

Number	Permit Type	Waiting List?
145	Full-time Residents	Yes
90	Part-time Residents	No
0	Reserved Rights	-
80	Contractors	Yes
30	Utility/Essential Services	-
105 (Maximum possible) Currently fewer	Municipal	-

**Usage for Month of February 2000**

3140 Residents	47 Fire Dept.	55 LIPA
1057 Contractors	359 Municipal	90 NPS Employees
140 SCPD	242 Essential Svces	76 Lthouse Assoc.
10 Town of Islip	245 School buses	16 Water Authority
13 Verizon		

**Review of Current Driving Regulations**

The Committee reviewed the current regulations, discussing each section. It was widely noted that the regulations, as drafted in 1987, do not reflect the present reality and will likely need rewriting in entirety. Key problems and issues identified by the Committee with regard to each section are listed below. Please note that the comments do not necessarily reflect a consensus of the group, rather, they are concerns raised by one or more Committee Representatives.

### *Definitions*

The definitions section should include and/or clarify the following terms: Community Vehicles; Year-round residents; Occasional absence; Domicile; Motorized vehicle; 4-Wheel drive vehicle; Off-road vehicle; Designated road; Designated route; Abandoned road; Trail; Path; Exempt Communities; Wildlife protection and Fixed permanent homes.

In addition, the definitions do not include (and therefore render illegal for off-road use) the following: school buses, private (non-governmental) ambulances, sand-scraping vehicles and other vehicles involved in beach nourishment, research vehicles, television and news gatherings vehicles and vehicles contracted by the government for special functions (e.g. whale removal).

Other noted items include:

- The terms "Public Utility" with "Essential Services" should be combined and broadened to include electronic communications; and terms "Construction" and "Business Vehicles" are unclear with regard to contractors working for a utility.
- "Motor Vehicle" as defined in CFR, includes golf carts, and therefore by regulation use of the carts requires a permit.
- The terms "Essential" and "Necessary" should be combined and used throughout the regulation in a consistent manner. In addition, the definition should clearly distinguish needs from wants.
- "Public Utilities" does not include private water companies though many private companies now do work on the Island to ensure water supplies.
- The regulations are inconsistent with regard to use of the terms "One-mile" and "Nearest"
- "Year-round contractor business" term is too vague
- Jurisdiction and the boundaries of the NPS are not clear in the regulations and the regulations do not address cross-jurisdictional issues.

### *Routes for Motor Vehicle Travel*

- The regulations do not identify off-road routes, which is inconsistent with current CFR requirements. Clarification and further definition is needed for the ownership of rights of ways and the term "Access."
- Regulations do not include maps making it difficult to understand their application.
- There is no provision for the inland Burma "Road."
- The Lighthouse tract was not federally owned when regulations were promulgated.
- It was further noted that violations of this provision are common, particularly with regard to "Limited Travel."
- Dune Crossings are not posted.

### *Alternative Means of Transportation*

- The regulation does not recognize the changes in transportation availability since 1987, nor does it specify the meaning of Alternate Transportation (e.g. does it include private boats).

- It is unrealistic in times of day for travel with regard to how and when people work (e.g. contractors often work outside of 9:00 a.m. – 5:00 p.m.)
- The "one mile limit" is problematic, as there is no alternate means of transportation for some and no consideration of individual situations.
- There are few docks on Fire Island, some are community owned, and some are owned by private companies. Most are not set up to accommodate heavy loads.
- There are few places where garbage can be stored, staged, and removed via barge.

### *Permit Required*

- This section does not include ambulance service.

### *Permit Eligibility*

- Does not include all permit recipient categories (e.g. school buses, utilities) and refers to who can apply for rather than who can receive a permit.
- NPS noted that "temporary access" is currently used for short-term medical needs and other special situations, but the term is not clearly defined.
- "Reserved rights" are no longer applicable.
- The number of permits unfairly distributed across the East and West End communities.

### *Standards for Issuance of Permits*

- The NPS Superintendent's discretion is broad with vague criteria on which to base decisions, leading to inconsistent application and complaints of unfairness. To protect both the Park and stakeholders, it was suggested that this discretion should be more clearly defined in new regulations. It was also noted that the regulations must find the right balance between clarity and discretion.
- There is an unclear sequence of permits of various jurisdictions. The permit process is very cumbersome: If you are a resident of Ocean Beach or Saltaire, you must get a driving permit from the Village, then go to Brookhaven or Islip and prove that you are a year-round resident, then, if all requirements are met, NPS will grant a permit.
- The current regulations are not being enforced properly in terms of permit holders. For example, there are non-residents holding resident permits and it is known that people are sharing single permits. Moreover, there is no prosecution for misrepresentation on the permit application. Enforcement is important in regulating the number of permits in use.
- In terms of public safety, official vehicles are not always in compliance with the regulations with regard to the speed limit.
- There are presently too many municipal permits held. Issuance to elected officials should be to the position, not the individual to prevent individuals from retaining their permits after their term of office expires.
- The regulations do not consider factors relating to quality of life and Island enjoyment.
- There is misunderstanding about whether the Waiting List is for current residents, or for those intending to become residents in the future. For example, it is common practice for someone approaching retirement to place themselves on the waiting list knowing that the process could take more than three years. Some are concerned that this practice prevents children of year-round residents from having a fair chance at obtaining a permit in a reasonable time frame. Also with regard to the Waiting List, it should be made public so that everyone on the list knows where he or she stands.

### *Limitations on Number of Permits*

A Committee representative who was involved with drafting the current regulations noted that the maximum allowable number of permits was based on the actual usage for each category (+5) at the time the regulations were drafted in 1987. Many Committee representatives stated that the issue is not with the number of permits, but concerns the number of trips made, the enforcement and implementation of the permit process, and the volume of inter-island traffic. Many expressed concern about the amount of trips on-island and how these trips affect the quality of life.

Other noted problems with this section of the current regulations include:

- People use their permits for many different purposes simultaneously (e.g. Resident and Contactor). More than one permit per household should not be allowed.
- The "Limitations" are defined inconsistently.
- It is unclear how many permits of "lesser periods" are issued.
- Regulations prohibit the transferring of permits, but in reality people do and the regulations must define when and how this can be done.
- "Year" is not defined as to beginning/end dates.
- The permitting process falls within the middle of high driving season.
- A person on the permit waiting list has no way of knowing where they are in the queue and how long it will be before their permit application will be considered.

### *Permit Limitations*

It was recognized that vehicles and technology have changed since the regulation was written. For example, the regulation does not allow flexibility for legitimate need of vehicles weighing more than 10,000 pounds on occasion.

### *Authorized Travel*

The Committee noted that this section must be re-written in its entirety, as the actual driving season differs from that referred to in the regulations. Moreover, it was recognized that setting specific dates is inherently problematic. E.g. Piping Plover closures from Long Cove to Smith Point each year could vary in frequency and duration.

### *Rules of Travel and Violations*

Due to time constraints, discussion of the final two sections of the current regulations was deferred until the next meeting. It was noted that enforcement was a major concern of stakeholders.

## **Public Comment on Current Driving Regulations**

Laurie Farber, Conservation Chair of the Long Island Sierra Club, asked that the Committee consider the following issues/questions when drafting the new regulations: (1) Regarding that portion of the causeway that was improved with federal funds, if it is determined to be a "road" and/or is designated as such, can there still be a checkpoint to prevent persons without a permit from proceeding beyond it; and (2) the new regulations should be drafted such that vehicles can park in the lot and bicycles can travel on the road. The Committee should also consider allowing Burma Road use by handicapped visitors,

lighthouse volunteers, researchers and Park employees.

### **Ideas for the Future: Initial Concepts for Consideration**

The following were suggestions made regarding improving and/or changing the current driving regulations. In this section on concepts suggested and throughout this meeting summary, points are made without attribution with the exception of the NPS and public comments.

#### *Further Study*

The impairment of and impacts on the Park Resource by ORV use must be assessed. This is not done under the current regulations, but instead is guided by the "Rhizome Rule" which prohibits driving within twenty feet of a dune indicated by the presence of beach grass (1986). This rule is vague with regard to how much beach grass is necessary to invoke the rule (e.g. a single blade or a row of beach grass). Knowledge gained since 1986 must be taken into account. The Committee should consider Environmental Analyses done by other seashore parks. In addition, the impacts on the Park Resource from increased use of waterborne transportation must be studied as well as impacts internally within the Island on walkways from increased traffic (e.g. Seaview) that might occur due to regulatory changes.

#### *Better Enforcement*

- Regulate the number of passes rather than permits
- Regulate at the entrance rather than by time
- Uniform process across jurisdictions is essential
- Spot checking for compliance with current regulations rather than attempting full enforcement could reduce costs
- Strengthen enforcement yet allow some discretion for special circumstances. This is one example of the need to balance consistency for fairness flexibility for special needs.

#### *Local Control and Local Opportunity*

- Manage permit/access at the gate and side roads within the communities
- Local government to determine the number of permits granted
- Allow Islip to determine the number of permits and times when driving will be allowed.
- Permits should be issued to vehicles or organizations rather than to individuals (i.e., for families, the issuance of a permit to an individual prohibits other family members from driving within the set trip limits).
- The regulations should allow for the needs and circumstances of different communities.

#### *Material Outcomes Through Reduction of Vehicle Trips*

- Determine needs and better coordinate LIPA and private water companies for fewer trips. Establish staging areas within the Island to reduce on-Island traffic.
- Develop staging areas for garbage between Kismet and Saltaire and take this garbage from the Island by boat.
- Villages consider boats operated by Harbormaster to transport municipal employees rather than by car

#### *Driving Bans*

- Develop distinct regulations for summer (no driving) and winter (driving). Educate the public about the necessity for driving in the spring and fall (to prepare for the summer season) to minimize visitor complaints to the NPS about traffic.
- The regulations are basically sound and can be made more effective with revisions.
- Solutions could be built around making very different rules for winter vs. summer driving.

## **NPS Concept for Consideration**

The NPS offered a concept for consideration by the Committee. The NPS noted that this was a concept and that they were entering into this process with full intention to negotiate the issues at hand and not make decisions unilaterally during the process. This is not intended as a "bottom line" but as one starting point for the negotiations. Other concepts and proposals will also be considered by the Committee.

### *NPS Concept*

Designate the so-called "Burma Road" tract running from the east boundary of Robert Moses State Park to the west boundary of the Sunken Forest west of Sunken Forest, a park "road" (rather than a route). As such, no NPS off-road regulations would be needed to manage driving on this route. The driving could still be permit controlled through the Towns of Islip and Brookhaven and the regulations could be crafted to determine who is eligible to drive on the road. NPS could enforce the West End permits at the access point through some kind of check-point. East of Sunken Forest, there would be no driving allowed on the beach under normal circumstances. However, none of these restrictions would apply to the following: Police, Fire Departments, Emergency Medical Services, official use by federal, state, and local governments, and school buses (within limits).

Rationale: The NPS noted the following rationale. The East and West Ends of the Island are fundamentally different with regard to driving and land ownership. Very little driving is currently done in the 5 communities east of Sunken Forest, with fewer than 25 permits. East End residents regularly use water transportation. 90% of all driving on the Island is west of Sunken Forest. Moreover, there is very little federal land on the West End, while the East End is comprised largely of federal land. Driving that has no significant negative impact could be acceptable and the details could be worked out in these negotiations. Beach driving on the West End would also be negotiable. To be acceptable to the NPS, any regulation must protect the resource.

NPS noted that a long term benefit of the Burma Road designation is that it will provide an alternate means of travel during Piping Plover and Tern closures, which will likely increase in the future. The NPS noted that it does not support regulations that ban all beach driving or that intentionally puts people out of business or deprives them of essential services.

The NPS stated that it will not receive a budget increase for regulation and enforcement. This concept would free up the need for enforcement at the East End and could increase staff resources available for enforcement on the West End.

### *Views Expressed Re: NPS's Concept*

Stakeholders raised many questions and concerns regarding this concept. These questions and concerns are stated below.

- Contractors would be restricted to interior roads, causing a heavy increase in interior traffic.
- Subsequent to the wilderness designation, the Burma Road was not used for traffic from Watch Hill and Smith point and may not be passable except for a few emergency vehicles.
- East of Sunken Forest, the Burma Road does not connect all communities and thus would isolate each of the eastern communities and dramatically alter the current state of affairs.
- This concept isolates the eastern communities.
- This concept would hinder people's ability to make a living on Fire Island and may put smaller enterprises out of business.
- The Burma Road also serves as a sidewalk, trail, and cycle path and increased traffic would decrease substantially public safety.
- All of the services currently demanded by people will increase in cost.
- The greatest impact on the beach is not driving but the Atlantic Ocean. Homeowners spend their own money to keep the seashore from eroding.
- The concept would destroy the year-round residents' quality of life.
- Homeowners' property values would be damaged.
- Fear of transferring the regulation of West End driving to the Town of Islip. If NPS concept is to be implemented, the Committee should reconvene for Regulatory Negotiations with the Town of Islip.
- The underlying "offer" the NPS seems to be making is that they will allow some beach driving in exchange for the towns and villages taking over more of the oversight of driving on the Island.
- NPS is trying to get out of the permit business but this is unrealistic.
- The constituencies should recognize that the increasing demand for services causes increased vehicle activity and this has an impact.
- This concept would help protect the natural resources of the Island.
- The impact of 10,000 day-trippers to the beach should also be considered.
- If the NPS charter is to protect the resource, shifting the vehicle burden from the beach to the Island interior will not resolve the problem.
- This concept inappropriately shifts problems with driving from the outside of the Island to the interior.
- This concept should be considered unworkable upon arrival. The concept would dramatically diminish the quality of life on Fire Island.
- With this proposal, the NPS is trying to divorce itself from the communities.

### *Views Expressed Re: The Process*

In addition to expressing concerns and questions about the NPS concept, some members expressed concerns about the process. These are listed below.

- Offering the concept at the end of two days does not provide the Committee time to digest and consider the concept. It should not have been offered at the end of two days.
- The mediators should have let the participants know more about this proposal or at least the process ahead of time so that the negotiators could have come to the meeting better prepared to discuss this radically different approach to off-road driving regulation.
- Given NPS's dramatically different concept (from the status quo), the Committee used valuable time reviewing the existing regulations and assuming the changes would be on the current regulations rather than rewriting completely different regulations.
- This proposal is a call to think "outside the box" for all of us, which could be very productive. Let's take it as a starting point, not an end point.
- Some reg-neg participants are stunned by the proposal and the process, in part, because they are not used to being full negotiators with NPS, but rather supplicants in search of approvals and permits.

- Given the proposal, participants need more time than is currently allocated between meetings to consider the proposal, talk to constituents, and consider different proposals in response.
- More time is needed between the second and third set of meetings to allow time to talk with constituents.
- A fourth session may be needed.
- Stakeholders can convene in the next meeting, and then, if they desire, caucus without the NPS.
- The mediators indicated that they are bound to protect confidentiality. Information shared confidentially with the mediators by any of the participants will not be disclosed.

### **Looking to the Future: Principles of Driving Regulation**

Given the concerns raised about the concept and the process, some Committee Representatives suggested the following principles that might inform the development of driving regulations on Fire Island going forward.

- No Surprises (communicate ideas as early in the process as possible).
- We are in this together.
- Concepts and proposals are negotiable.
- Consider many ideas, not just the NPS's.
- Focus on linkages/connections and anticipate externalities and unintended consequences.
- Seek to meet multiple interests and needs.
- Minimize adverse impacts to communities, lifestyles, property values and natural resources.
- Apply principles to both rules and their enforcement.
- Resource and recreation concerns are primarily on the beach – beach driving has impacts.
- Consider small business impacts, utilities repair and maintenance, public safety
- Link the shore to the interior of the island. Consider the impacts as a whole, not in piecemeal or geographically distinct fashion.
- Reduce the complexity of the regulations and clarify: jurisdiction, enforcement, and understanding.
- Protect the "Gem" that Fire Island is and all hold dear.
- Multiple needs to balance: residents (year round and part-time), visitors, contractors, carters, business, ferries, and natural resources.
- Strive to balance the strengthening of enforcement while maintaining flexibility.

The Committee identified additional information needs throughout the meeting as follows:

- NPS website: [www.nps.gov/FIIS](http://www.nps.gov/FIIS)
- Committee Contact List to each member
- Cape Cod National Seashore final negotiated agreement and regulations
- Past beach closures
- Detailed driving regulations and jurisdictions of NPS, towns and villages
- Permitting and enforcement
- Driving/Permitting regulations of each jurisdiction
- Identity of permit holders and the waiting lists for each jurisdiction
- List of Off-Island Contractors
- Number of golf cart permits
- Availability of ferries/adequacy
- Statistics: Number of passes monthly, for East and West Ends, by permit type
- Maps for Committee use showing roads, jurisdictions, land ownership

- General Management Plan
- Impacts on beach/water/other resources from both driving and recreation
- Written details of NPS Concept
- DOT funds on Burma from Lighthouse to Kismet - implications for public access
- Definitions
- Constituency Statements
- Burma "Road" ownership and easements

## Next Steps

The mediators will prepare a draft meeting summary for Committee review as soon as possible. Some representatives will be meeting with their constituents very soon so the proposed two-week timeline for distributing the draft summary would hamper the effectiveness of those consultations. Nominations for new or substitute alternate representatives should be submitted to the Superintendent by July 8. The mediators will contact Committee representatives to explore possible dates for a session in late October or November and to discuss the agenda for upcoming sessions.

## Documents Distributed During the Meeting\*

### Title Source

1. Fire Island Official Map and Guide National Park Service
2. Off-Road Vehicle Regulations (36 CFR 7.20) National Park Service
3. 2001 NPS Management Policies

Chapter 1: The Foundation

Chapter 8: Use of the Parks National Park Service

4. United States Code Title 16

*Enabling Legislation for Fire Island National Seashore* National Park Service

5. Executive Order 11644

*Use of Off-Road Vehicles on the Public Lands* National Park Service

6. Notice of Meetings of the Negotiated Rulemaking

Committee National Park Service

7. Fire Island National Seashore Negotiated Rulemaking

*Advisory Committee for Off-Road Driving Regulations*

Draft Groundrules Environmental Mediation Services/Consensus Building Institute

8. Code of the Town of Islip Rules and Regulations and

Limitations on the Total Number of Driving Permits Town of Islip, NY

9. Brookhaven Code Chapter 9, Beaches Town of Brookhaven, NY

\*All documents distributed during meetings of the Negotiated Rulemaking Advisory Committee become part of the Administrative Record and are available from:

Superintendent

National Park Service

Fire Island National Seashore

120 Laurel Street

Patchogue, NY 11772

631 289-4810

## **MEETING ATTENDANCE**

**JUNE 28, 2002**

### **Name Organization/Stakeholder Group**

#### **PRINCIPAL REPRESENTATIVES**

Cannava, Ernest J. - Town of Islip

Clock, Forrest - On-Island Contractors

Dillon, Costa - National Park Service

Esposito, Tom - Freight Companies

Finkenberg, Jack - Environmental Organizations

Gill, Anna Hannon - Village of Saltaire

Gillespie, Kevin - Fire Island Year-Round Residents

Goldhirsch, Suzy - West End Residents

Jantzen, Hal - Suffolk County Police Dept.

Kassner, Jeffrey - Town of Brookhaven

Lund, John - East End Residents

Murray, Robert L. - Suffolk County Water Authority

Reich, Walter C. - Island-Wide Stakeholders

Schwarz, Thomas J. - West End Residents

Stoddard, Gerald - Year-Round and Seasonal Residents

Thornberg, Robert - Fire Island Fire Chief's Council

Wikso, Jim - Off-Island Contractors

**ALTERNATE REPRESENTATIVES**

Beqaj, Sedat - Town of Islip

Dobert, Ron - Island Wide Stakeholders

Jerome, Bev - West End Residents

Kaufman, Luke - Ferry Companies

Read, Bill - Suffolk County Police Dept.

Seymour, James - Environmental Organizations

Sullivan, Barry - National Park Service

Weinstein, Arthur - West End Residents

Zysman, Joe - Environmental Organizations

**MEMBER ORGANIZATIONS/STAKEHOLDER GROUPS NOT REPRESENTED**

Essential Services

Fire Island Law Enforcement Council

Garbage Carters

Visitors

**TECHNICAL ADVISORS**

Fritz, John - NY Sportfishing Federation

Papas, Steve - US Fish and Wildlife Service

Vaughan, Jeffrey - Long Island Beach Buggy Assoc.

Wintenberger, Elizabeth - Robert Moses State Park

**NPS ADVISORS/STAFF**

Abell, Diane - National Park Service

Bilecki, Michael - National Park Service

Czachor, Paul - National Park Service

Gonzalez, Elena - DOI Office of the Secretary

Lepore, Robin - DOI Office of Regional Solicitor

Lippert, Jay - National Park Service

Marc, Michelle - National Park Service

Spotts, Richard - National Park Service

Valentine, Wayne - National Park Service

**INDIVIDUALS WHO PROVIDED PUBLIC COMMENT**

Farber, Laurie - Long Island Sierra Club

**JUNE 29, 2002**

**Name Organization/Stakeholder Group**

**PRINCIPAL REPRESENTATIVES**

Clock, Forrest - On-Island Contractors

Dillon, Costa - National Park Service

Esposito, Tom - Freight Companies

Finkenberg, Jack - Environmental Organizations

Gill, Anna Hannon - Village of Saltaire

Gillespie, Kevin - Fire Island Year-Round Residents

Goldhirsch, Suzy - West End Residents

Hafele, George - Ferry Companies

Lund, John - East End Residents

Murray, Robert L. - Suffolk County Water Authority

Stoddard, Gerald - Year-Round and Seasonal Residents

Wikso, Jim - Off-Island Contractors

**ALTERNATE REPRESENTATIVES**

Beqaj, Sedat - Town of Islip

Dobert, Ron - Island Wide Stakeholders

Jerome, Bev - West End Residents

Read, Bill - Suffolk County Police Dept.

Sullivan, Barry - National Park Service

Vogel, Peter - Garbage Carters

Weinstein, Arthur - West End Residents

Zysman, Joe - Environmental Organizations

**MEMBER ORGANIZATIONS/STAKEHOLDER GROUPS NOT REPRESENTED**

Essential Services

Fire Island Law Enforcement Council

Town of Brookhaven

Visitors

**TECHNICAL ADVISORS**

Papas, Steve - US Fish and Wildlife Service

Wintenberger, Elizabeth - Robert Moses State Park

**NPS ADVISORS/STAFF**

Czachor, Paul - National Park Service

Lepore, Robin - DOI Office of Regional Solicitor

Lippert, Jay - National Park Service

Marc, Michelle - National Park Service

Spotts, Richard - National Park Service

Valentine, Wayne - National Park Service

**INDIVIDUALS WHO PROVIDED PUBLIC COMMENT**

Farber, Laurie - Long Island Sierra Club

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