



United States Department of the Interior

NATIONAL PARK SERVICE
 Fort Raleigh National Historical Site Wright Brothers National Memorial
 Cape Hatteras National Seashore
 1401 National Park Drive
 Manteo, NC 27954
 252-473-2111



IN REPLY REFER TO:

A16

November 3, 2008

W. James Keene, President
 North Carolina Beach Buggy Association
 P.O. Box 9490
 Manteo, NC 27954

Dear Jim,

This letter responds to your email message of October 27, 2008, requesting clarification of the applicability of the National Historic Preservation Act of 1966, Section 106 and Executive Order 12962, as amended September 26, 2008, to off-road vehicle management at Cape Hatteras National Seashore.

First, I believe that you have inaccurately characterized my comments. I did not use the word "reject" or dismiss the authorities mentioned as being unworthy of consideration in their own right. Robert Fisher's summary more or less captures the discussion. The DOI Office of the Solicitor and NPS environmental compliance staff had reviewed the routes and areas proposals prepared by both the environmental/pedestrian group and the ORV/access group and expressed concerns about both proposals. The concerns included:

- Both proposals designate route and areas then rely, to a certain extent, on overlays to address resource protection and user conflict issues. The EOs on ORV use require that the designation of routes and areas be based upon the protection of the resources of public lands, promotion of the safety of all visitors, and minimization of conflicts among the various uses. In practical terms, this means that resource protection, public safety and user conflict concerns must first be identified, then the routes and areas designated in a way to minimize those impacts and conflicts. As an example, I stated that in developing the NPS ORV management action alternatives, NPS identified key resource areas and congested pedestrian areas first, then designated ORV routes and areas and non-ORV areas on either a year-round or a seasonal basis to minimize impacts and conflicts. The NPS approach, we believe, is in accordance with the EOs on ORV use.
- The Office of the Solicitor questions the applicability of the Wilderness Act and the National Historic Preservation Act as a basis for the designation of ORV routes and areas. The EOs

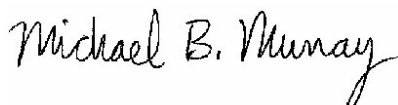


on ORV use make no mention of wilderness eligibility or of traditional cultural property eligibility as a criteria for designating ORV routes. (The EOs do mention that ORV areas and trails shall not be located in officially designated wilderness.) In other words, those authorities do not provide a legal basis for non-compliance with the EOs on ORV use, even if the park were to have a designated wilderness or traditional cultural property. NPS will consider the wilderness eligibility and traditional cultural property questions respectively through some other process. Meanwhile, the Committee needs to focus on complying with the EOs, particularly Section 3 (Zones of Use), in designating ORV routes and areas. As I suggested during the call, one approach that NPS is using in some of its alternatives is to include seasonal, as well as year-round, ORV and non-area designations to minimize conflicts with wildlife breeding activity and with seasonally congested beaches.

- With regard to Executive Order (EO) 12962, as amended by EO 13474, the Office of the Solicitor advises that it probably does not change anything with regard to ORV management at Cape Hatteras and it definitely does not change anything with respect to access. The older (Clinton) EO directs agencies such as NPS at an agency-wide level to provide access for recreational fishing "where practicable." That sort of agency-wide direction does not mean much in terms of specifics at the level of an individual park unit. At Cape Hatteras, recreational fishing has been allowed and will continue to be allowed. The amended EO adds the requirement that recreational fishing be managed so as to be a "sustainable" activity in park units, but does not give any guidance as to what that means. Given that the purpose of the overall amendment is to "conserve, restore and enhance aquatic systems to provide for recreational fishing opportunities nationwide" it would be hard to justify interpreting this EO to mean unlimited access for recreational fishing. The language at the end of Section 1(d) of the amended EO, "...or activities under any Federal authority, consistent with applicable law" makes it clear that the new EO does not relieve the agency of complying with other existing legal requirements, which in our case include the Organic Act, the ORV EOs and the NPS ORV regulation.

In closing, I respectfully disagree with your assertion that our concerns about applying the other authorities to the designation of ORV routes and areas will further complicate negotiations. I believe the Committee simply needs to focus on designating routes and areas in a way that will comply with the Executive Orders on ORV use, and that focus will lead us to a plan that is acceptable to NPS and DOI and which will withstand legal scrutiny. I appreciate your interest and look forward to further discussions.

Sincerely,



Michael B. Murray
Superintendent

cc: Areas and Routes Subcommittee