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CAPE HATTERAS ACCESS PRESERVATION ALLIANCE
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October 29, 2009

Mike Murray, Superintendent
 Cape Hatteras National Seashore
 1401 National Park Drive
 Manteo, NC 27954

Dear Superintendent Murray,

Thank you for your letter dated October 21, 2009 in response to our letter dated September 2, 2009 regarding certain parts of the Cape Hatteras National Seashore as Traditional Cultural Properties (TCPs).

We feel that we must call attentions to several issues in regard to your letter of October 21, 2009. Firstly, the overarching mandate of Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), is that effects to historic properties be taken into consideration in federal actions. A federal action includes activities that are federally permitted and potentially, any undertaking by a federal agency. Outer Banks communities are deeply concerned that formulation of the Final Rule governing access will result in severe restrictions in the use of Traditional Cultural Properties (TCPs) located within the Seashore. The development of the Final Rule clearly constitutes a federal undertaking. Further, any federal undertaking that requires National Environmental Policy Act (NEPA) review can be considered fully subject to Section 106 provisions of the NHPA.

As you point out, our original request is relevant to Section 110 of the NHPA. However, the Cape Hatteras National Seashore has only partially satisfied Section 110 mandates. With regard to the referenced ethnographic overview and assessment *Ethnohistorical Description of Eight Villages Adjoining Cape Hatteras National Seashore and Interpretive Themes of History and Heritage*, this study represents a "context description, background, and preliminary identification efforts" for non-architectural/non-archaeological cultural resources associated with the Seashore. The NHPA mandates that effects on identified historic properties be avoided, minimized, or mitigated, and not just the historic properties identified. In NHPA context "historic properties" include all types of cultural resources including TCPs. If anything, we feel the findings of the ethnographic overview and assessment commissioned by the National Park Service support the position that the properties in question indeed constitute TCPs.

Most importantly, the Cape Hatteras Access Preservation Alliance strongly disagrees with your letter's assessment that the properties in question do not constitute TCPs. For one, the process by which this assessment was developed falls well short of federal guidelines for meeting NHPA requirements. In addition, your letter states that:

“we do not have evidence that there are Outer Banks communities that have cultural practices and beliefs associated with the specific beaches in question. Also, we do not have sufficient information demonstrating that an association with specific beaches is integral to continuing cultural identity of that community.”

Under the NHPA, historic properties for which insufficient information concerning National Register of Historic Places (NRHP) eligibility is available should be considered potentially eligible to the NRHP until it can be demonstrated otherwise.

Again, we maintain the properties in question constitute TCPs in conformance with the *National Park Service National Register Guidelines for Evaluating and Documenting Traditional Properties* that characterize potential TCPs as:

- “1) components of a rural community whose organization patterns of land use reflect the cultural traditions valued by its long-term residents; and
- 2) a location where the communities have traditionally carried out economic and other cultural practices important in maintaining their historic identity.”

The guidelines also states that TCPs can be difficult to distinguish from non-cultural landscapes and that defining them as such require a heavy emphasis on personal interviews coupled with onsite field work. This level of effort has not been carried out.

Given the properties' formal identification as TCPs on behalf of Outer Banks communities based on the published *National Park Service National Register Guidelines for Evaluating and Documenting Traditional Properties*, your letter dismissing them as such (based on your own federal agency's opinions) falls well short of legal obligations for meeting requirements of the NHPA as codified in 36 CFR Part 800, Protection of Historic Properties. CFR 36 Part 800 clearly states that “federal agencies shall make reasonable and good faith efforts to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews and sample field investigation.” None of these efforts have been carried out to determine if the properties in question are eligible to the NRHP as TCPs. The National Park Service TCP identification guidelines are also explicit in that a primary consideration for determining what qualifies a location a TCP are the expressed views of the community that holds the property in value. Again, these views have not been solicited, heard, or considered by your agency.

CFR 36 Part 800 also mandates that coordination of Section 106 be undertaken "as early as possible in the NEPA process." Also expressly stated in the NHPA is that the Advisory Council on Historic Preservation be given "reasonable opportunity to comment" on NHPA compliance actions.

The Cape Hatteras Preservation Access Alliance reiterates its position that the properties in question constitute TCPs potentially eligible to the NRHP. As such, we feel the National Park Service is legally obligated to conduct a formal NRHP eligibility determination under both Section 106 and Section 110 of the NHPA. The appropriate methodology for such a NRHP evaluation would include extensive public outreach and interviews with members of Outer Banks communities that hold the properties and their traditional use in value. We request to be included as a consulting party in this process. We also reiterate our request that the Advisory Council on Historic Preservation be invited to participate.

We very much look forward to moving forward and working constructively with all parties throughout the Section 106 consultation process. We would also welcome the opportunity to meet in person to discuss these issues in greater detail.

Sincerely,



W. James Keene, President
North Carolina Beach Buggy Association
On behalf of: Cape Hatteras Access Preservation Alliance

CC: David Vela, Director, National Park Service Southeast Region
Caroline Hall, Assistant Director, Advisory Council on Historic Preservation
Kelly Yasaitis Fanizzo, Program Analyst, Advisory Council on Historic
Preservation
Dr Jeffery Crow, North Carolina State Historic Preservation Officer.