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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:

L7615 (CAHA)

October 14, 2010

Mr. Pete Benjamin
U.S. Fish and Wildlife Service
Raleigh Field Office
P.O. Box 33726
Raleigh, NC 27636-3726

Dear Mr. Benjamin:

The purpose of this letter is to provide updated information related to our February 17, 2010 letter requesting formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act (ESA) on Alternative F, the National Park Service (NPS) preferred alternative, in the draft Cape Hatteras National Seashore Off-Road Vehicle (ORV) Management Plan/Environmental Impact Statement (draft plan/EIS or DEIS). Based on public and agency comment on the DEIS, we have revised Alternative F and are hereby providing information about those revisions, so that the biological opinion (BO) can be based on the NPS preferred alternative (Alternative F), as described in the Final Cape Hatteras National Seashore ORV Management Plan/EIS (FEIS).

In our February 17, 2010 letter we requested consultation for the following listed species: piping plover (Charadrius melodus) of the Atlantic Coast, Great Lakes and Great Plains populations; seabeach amaranth (Amaranthus pumilus); and loggerhead (Caretta caretta), green (Chelonia mydas), and leatherback (Dermochelys coriacea) sea turtles. Based on the information in the DEIS and in the revisions we have made in the Alternative F, we have determined that actions that would be implemented by NPS may affect/are likely to adversely affect piping plover; may affect/are likely to adversely affect sea turtles, and may affect/are likely to adversely affect seabeach amaranth. We have also determined that the implementation of Alternative F may affect/is not likely to adversely affect designated critical habitat for wintering piping plover.

As noted in our letter of February 17, 2010, the DEIS was developed to also serve as the biological assessment (BA). This letter and its attachments provide an updated description of the proposed action (Alternative F).

DESCRIPTION OF ALTERNATIVE F: NPS PREFERRED ALTERNATIVE (FEIS)

In December 2007, the Department of the Interior established a negotiated rulemaking advisory committee (Committee) to assist the NPS in the development of an ORV regulation for the Seashore. The Committee met 11 times from January 2007 through February 2009, and conducted numerous subcommittee and work group meetings and conference calls. The Committee discussed and explored options for the full spectrum of ORV management issues covered in this plan/EIS. As a result of these discussions, the NPS considered a variety of concepts and measures that either originated from Committee members or were discussed during Committee, subcommittee, or work group sessions. Although the Committee as a whole did not reach a consensus on a recommended alternative, in creating this action alternative the NPS has made management judgments as to which combination of concepts and measures would make an effective overall ORV management strategy. The NPS has also included under Alternative E some ORV management approaches identified by the Committee that would require more intensive management (such as park-and-stay and SCV camping), in keeping with the maximum management theme of that alternative.

After reviewing public and agency comments on the DEIS, the NPS revised Alternative F for the FEIS by adopting some of the simpler approaches from the other alternatives (e.g., instead of SMAs, designating more year-round vehicle free areas and using standard buffers with prenesting and nonbreeding closures; adopting simpler and easier to understand hours for night-driving restrictions; and using more consistent seasonal closure dates among the villages). Also in response to public and agency comments, the amount of construction was decreased and pedestrian access increased. Designation of ORV routes was adjusted to provide balance between ORV areas and vehicle-free areas. The bypass provision and criteria from Alternative A was incorporated in Alternative F to mitigate effects of sea turtle closures that could block fall ORV access to Cape Point. A bypass would be instituted, if feasible, only for turtle nests (not for shorebird breeding activity) in the area between Ramp 44 and Cape Point. The existing short, interdunal route at the "narrows" has been added as an interdunal route since it has been in existence for a number of years and it could also be used to by-pass a turtle nest after bird breeding has ended in the area. Night driving (9 p.m. to 7 a.m.) would not be permitted in the vicinity of a turtle nest that has reached its hatch window of 50-55 days (see Table 10-1); however, the bypass, if feasible, would permit ORV access to the Point during daylight hours until the nest has hatched.

This Alternative F is designed to provide visitors to the Seashore with a wide variety of access opportunities for both ORV and pedestrian users, including access to the spits and points, but often with controls or restrictions in place to limit impacts on sensitive resources. This means that some areas may be kept open to ORV users for longer periods of time by reopening some ORV corridors at the spits and points sooner after shorebird breeding activity is completed than in alternatives C or E, and by improving interdunal road and ORV ramp access. Pedestrian access would be enhanced by providing increased parking capacity at various points of access to vehicle-free areas. Such areas would be provided during all seasons so non-ORV users can experience the Seashore without the presence of vehicles. Like the other action alternatives, this Alternative F would manage ORV use by identifying areas that historically do not support sensitive resources and areas of lower visitor use. Some of these areas would be designated as ORV routes year-round. Areas of high resource sensitivity and high visitor use would generally be designated as vehicle-free areas year-round or as seasonal ORV routes, with restrictions based on seasonal resource and visitor use.

The year-round designation of vehicle-free areas and ORV routes, in conjunction with the species management strategies described in Table 10-1, would provide for species protection during both the breeding season and the nonbreeding season. SMAs would not be designated under this alternative and one set of standard buffers, similar to the ML2 buffers in the other action alternatives, would be utilized. During the shorebird breeding season, pedestrian shoreline access along ocean and inlet shorelines below the high-tide line would be permitted in front of (i.e., seaward of) prenesting areas until breeding activity is observed, then standard buffers for breeding activity would apply. The NPS retains discretion at all times to enforce more proactive closures or take other measures, if considered necessary, consistent with its obligations under the law. Prenesting areas would generally be closed March 15 through July 31 (or August 15 if black skimmers are present), or until two weeks after all chicks have fledged and breeding activity has ceased, whichever comes later. For all species closures, including prenesting closures, the NPS would not reduce buffers to accommodate an ORV corridor or ORV ramp access.

Bodie Island Spit would be designated as a seasonal ORV route from September 15 through March 14 and would be vehicle-free from March 15 through September 14. Like alternative E, alternative F also involves the development of an interdunal pedestrian trail on Bodie Island. The trail would begin at a new parking area near Ramp 4 and would provide access to the inlet. This new trail would also be subject to resource-protection closures. Year-round ORV routes would be designated at Cape Point and South Point, with 35-meter-wide (115-foot-wide) ORV corridors during the breeding season. Standard resource-protection buffers would apply to these ORV corridors. When nests occur near the ORV corridor or unfledged chicks are present, the probability of being able to provide this access would decrease. The provision and criteria described in Alternative A for creation of short-term bypasses would be incorporated in Alternative F only for sea turtle nests and only between Ramp 44 and Cape Point. Alternative F would include the construction of a short seasonal ORV route to provide pedestrian access to the sound on Ocracoke Island. In addition, the NPS would consider applications for commercial use authorizations to offer beach and water shuttle services and would apply for funding to conduct an alternative transportation study to evaluate the feasibility of alternative forms of transportation to popular sites, such as inlets and Cape Point.

The variety of access methods possible under Alternative F, based on the establishment of year-round and seasonal ORV routes and vehicle-free areas, and increased interdunal roads and parking to support access, would provide the public with ORV and pedestrian access to a greater number of areas within the Seashore. This alternative would afford less predictability than alternative C or D, but more predictability than Alternative E, regarding areas available for use, and it would require a comparable level of oversight and management to Alternative E.

Areas that would be seasonally designated as vehicle free would include the areas in front of Ocracoke Campground and villages, except for Rodanthe north of the pier and Buxton, which would be vehicle free year-round. The dates for ORV use in front of the seasonally designated villages and Ocracoke Campground would be November 1 to March 31 when visitation and rental occupancy is lowest. These areas would be vehicle free April 1 to October 31 when visitation and rental occupancy is highest. When these beaches are open to ORV use, a safety closure would be implemented on portions of the beach that are not consistently at least 20 meters (66 feet) wide during normal high tides.

To facilitate access to ORV routes, Alternative F would add new Ramp 25.5 approximately 2.5 miles south of Ramp 23, relocate Ramp 59 to 59.5, and add a new Ramp 63 across from Scrag

Cedar Road. (Note: All action alternatives involve relocating Ramp 2 and building a new ramp at 32.5). New interdunal roads would facilitate access to locations that have either seasonal or year-round restrictions on ORV use. Locations for interdunal roads would include: inland of South Beach from Ramp 45 to Ramp 49, with one new ramp at 47.5 and on Hatteras Inlet Spit extending from the intersection of Pole and Spur Roads southwest toward the inlet, stopping at least 100 meters from the inlet. Existing soundside access points would remain open, with better maintenance than currently occurs. Signage/posts would be installed at the soundside parking areas and boat launch areas to prevent damage to vegetation and other soundside resources. This alternative also involves the addition of new parking areas with associated foot trails or boardwalks to facilitate pedestrian access at a number of locations.

ORV routes and vehicle-free areas under this alternative would still be subject to temporary resource closures established when protected-species breeding behavior warrants and/or if new habitat is created. Outside the breeding season, vehicle-free areas throughout the Seashore would provide relatively less-disturbed foraging, resting, and roosting habitat for migrating and wintering birds. These areas would be open to pedestrians for recreational use. In addition, resource closures at spits and points would also be established, based on an annual nonbreeding habitat assessment conducted after the breeding season, to provide areas of nonbreeding shorebird habitat with reduced human disturbance.

Designated ORV routes would be open to ORV use 24 hours a day from November 16 through April 30. From May 1 through November 15, all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) would be closed to non-essential ORV use from 9:00 p.m. until 7:00 a.m. to provide for sea turtle protection and allow enforcement staff to concentrate their resources during the daytime hours; however, from September 16 through November 15 selected ORV routes with no turtle nests remaining (as determined by the NPS) would reopen to night driving, subject to the terms and conditions established under the ORV permit.

ORV safety closures could be designated as conditions warrant and would be evaluated for reopening by NPS law enforcement staff on a weekly basis. ORV safety closures would be applicable only to ORV access; pedestrian and commercial fishing access would generally be maintained through safety closures. Alternative F provides specific guidelines for establishing and removing safety closures. Additional ORV-driving requirements would be implemented to provide for increased pedestrian safety in all areas open to ORV use, including the village beaches when open to ORV use. Under the carrying capacity requirement for Alternative F, the maximum number of vehicles allowed on any particular ORV route during peak use periods would be the linear distance of the route divided by 6 meters (20 feet) per vehicle (i.e., the equivalent of 260 vehicles per mile). In addition, parking within ORV routes would be allowed, but restricted to one vehicle deep. These measures would reduce safety concerns associated with overcrowding, such as at peak use periods during major summer holidays and weekends.

Alternative F would include an ORV permit system, with no limit on the number of permits issued. Permit fees would be determined based on the recovery of NPS costs incurred in implementing the ORV management plan that are not already covered by the Seashore's base operating funds. Expected permit fees would be similar to Alternative E due to the level of management required for implementation. Both annual and 7-day permits would be available under this alternative. To obtain a permit, ORV owners would be required to complete a short education program in person at an NPS facility. Vehicle owners would need to sign for their permit to acknowledge that they

understand the rules and that all drivers of the permitted vehicle will abide by the rules and regulations governing ORV use at the Seashore. A violation of the rules and regulations by the owner or driver of the ORV could result in revocation of the vehicle permit, and the owner/permittee would not be allowed to obtain another permit for any vehicle for a specified period of time. In addition to the mandatory education program for ORV users, the NPS would establish a voluntary resource-education program targeted toward non-ORV beach users.

Designated ORV routes under Alternative F are shown in the attached maps and described in Table 7-1 (attached). Details of the related ORV management actions under this alternative are described in Table 8 (attached).

The year-round designation of vehicle-free areas and ORV routes, in conjunction with the revised species management strategies described in Table 10-1 (attached) would provide for species protection during both the breeding season and the nonbreeding season. Species Management Areas (SMAs), as described for action alternatives C-E, would not be designated under Alternative F and one set of standard buffers, similar to the ML2 buffers in the other action alternatives, would be utilized. During the shorebird breeding season, pedestrian shoreline access below the high-tide line would be permitted in front of (i.e., seaward of) pre-nesting areas until breeding activity is observed, then standard buffers for breeding activity would apply. Pre-nesting areas would generally be closed March 15 through July 31 (or August 15 if black skimmers are present), or until two weeks after all chicks have fledged and breeding activity has ceased, whichever comes later.

NPS staff will follow guidance in the NCWRC handbook and FWS Loggerhead Sea Turtle Recovery Plan, which is to allow sea turtle nests to incubate at their original location if there is any reasonable likelihood of survival. Relocation of a nest would be considered only as an option of last resort. Accommodation of ORV access shall not be a factor in determining whether a nest needs to be relocated. When relocation is determined to be necessary, nests would be moved toward the dunes immediately behind the original nest location (when possible). Narrow beaches or beaches without nearby dunes (i.e. points and spits) may necessitate relocations to adjacent areas above the high tide line that are free of vegetation. If a choice for a relocation site must be made among adjacent areas that are equally suitable biologically, then accommodation of ORV access to a popular location may be considered as a factor in choosing an appropriate relocation site. An adjacent site that is less suitable biologically shall not be selected for a relocated nest to accommodate ORV access.

Every five years the NPS would conduct a systematic review of the species management measures identified in this alternative as being subject to periodic review. This could result in changes to those management actions in order to improve effectiveness.

SELECTION OF ALTERNATIVE F AS THE NPS PREFERRED ALTERNATIVE (FEIS)

To identify the preferred alternative, the planning team evaluated each alternative based on its ability to meet the plan objectives and the potential impacts on the environment. Alternative D was identified as the environmentally preferable alternative. Alternative F was identified as the NPS preferred alternative. Based on public and agency comments received on the draft plan/EIS (DEIS), the NPS has revised the Alternative F as described in the final plan/EIS (FEIS).

Both Alternatives D and F would meet most of the plan objectives either fully or to a large degree. In terms of species protection, both alternatives would provide the necessary buffers, as well as the proactive establishment of prenesting areas and protection of breeding and nonbreeding shorebird habitat. Seasonal night-driving restrictions would be similar under both of these alternatives, offering comparable protection to sea turtles and foraging bird species. However, Alternative F was chosen as the preferred alternative because it would provide not only effective resource protection but also would provide Seashore visitors with more diverse options for access and recreational use. Providing approximately 26 miles of the Seashore that are designated vehicle free areas (VFA) year-round, while 28 miles are open to ORV use year-round (subject to resources closures), would provide for a greater diversity of visitor use.

Although designation of all SMAs as year-round ORV closures under Alternative D would provide the necessary resource protection, the use of ML1 buffers in all SMAs would preclude all visitor access in these areas during the breeding season. If protected species do not utilize portions of the SMAs or if conditions of the Seashore change and habitat changes, Alternative D does not provide as much flexibility for the Seashore to manage visitor access as Alternative F, which provides for designated ORV routes that would remain open unless protected species activity results in a resource closure. In addition to providing species protection both during the breeding and nonbreeding seasons, Alternative F would also provide more flexibility and range of experience for visitor use and would enhance access to both VFAs and designated ORV routes by establishing strategically located new parking areas, pedestrian trails, interdunal routes, and ORV ramps. Because Alternative F provides for a greater variety of uses throughout the Seashore, it would have less of an impact on the socioeconomics of the area as well. As detailed in the impact analysis in Chapter 4, Alternative D would have greater impacts to the economy of the villages within the Seashore. In addition, Alternative F also would mitigate the potential economic and visitor impacts by encouraging alternative forms of access (water taxi and beach shuttle) to certain popular areas during times when they may be open for pedestrian use, but the access to the area may be closed due to a resource closure. By providing an alternate means for accessing these areas, beneficial economic impacts would be expected. Alternative F is also selected as the NPS preferred alternative because it incorporates some concepts and measures that originated in or were discussed during the negotiated rulemaking process, providing more public input. For these reasons, Alternative F was selected as the preferred alternative.

Alternatives C and E would meet the objectives from a moderate to a large degree, but to a lesser degree when compared to Alternative D because of the larger areas of recreational access allowed. By allowing more access to various areas of the Seashore during the breeding season of threatened, endangered, and species of special concern, the level of protection offered to these species would be less than Alternative D.

Alternatives A and B, on the whole, would meet the objectives from some degree to a moderate degree. These alternatives would not meet key objectives (such as those related to providing protection for threatened and endangered species and minimizing impacts to other natural resources at the Seashore) as well as the action alternatives. Because these alternatives would not meet the objectives to a large degree, they were not selected as the preferred alternative.

DETERMINATION OF EFFECT FOR ALTERNATIVE F (FEIS)

Piping Plover. Under the ESA, the actions taken under Alternative F may affect / are likely to adversely affect piping plover due to the minor adverse effects from monitoring and surveying and the minor to moderate impacts from ORV and other recreational use. Under Alternative F, year-round and seasonal VFAs would provide protection for migrating piping plover and plover establishing territories early in the season. However, recreational uses would still occur in the vicinity of plovers during breeding season in areas such as Cape Point and South Point. Under Alternative F, nonessential ORV traffic would be prohibited from all areas (other than the soundside access areas), from 9:00 p.m. to 7:00 a.m. from May 1 to November 15. From November 16 to April 30, ORV access would be allowed 24 hours per day in designated ORV routes for vehicles displaying a valid ORV permit. The NPS retains the discretion to limit night driving to certain areas or routes, based on resource protection considerations. These restrictions to night driving would provide long-term minor to moderate benefits to piping plovers but could still result in long-term minor adverse impacts during the time when night driving is allowed by permit. These impacts would result in a finding of may affect / are likely to adversely affect piping plovers under the ESA because the action would result in direct or indirect impacts to the species that are not discountable, insignificant, or beneficial. And while there may be beneficial impacts from surveys and monitoring, and management of recreation, the actions under Alternative F would also likely cause some adverse effects.

Under the ESA, the actions taken under Alternative F may affect / are not likely to adversely affect designated critical habitat for wintering piping plover due to the establishment of VFAs which would result in the closure of approximately 26 miles of shoreline to ORV use year round. These closures would provide less-disturbed foraging, resting, and roosting areas for migrating and wintering shorebirds and would protect the primary constituent elements of intertidal sand beaches and ocean backshores. These year-round VFAs along the ocean shoreline would be managed to allow for pedestrian use. Nonbreeding resource closures would also be established at the points and spits based on an annual habitat assessment, which would provide protection for wintering plover habitat. There would be some benefit to the critical habitat from the implementation of seasonal night-driving restrictions although these restrictions would only apply between May 1 and November 15, which would not cover the majority of time when the wintering population of piping plover is present at the Seashore.

Although there would be construction of ORV access ramps, parking areas, and interdunal roads, none of these improvements would impact any of the primary constituent elements of designated critical habitat for wintering piping plover.

Implementation of Alternative F would result in a finding of may affect / is not likely to adversely affect designated critical habitat for wintering piping plover under the ESA because the action would result in impacts to the critical habitat for the species that are discountable, insignificant, or beneficial. Actions under Alternative F would result in greater protection of the primary constituent elements of suitable interior habitat, spits, intertidal sand beaches, and ocean backshore, primarily as a result of the establishment of nonbreeding resource closures, and approximately 26 miles of year-round VFAs.

Sea Turtles. Under Alternative F, resources management activities would result in long-term moderate to major benefits due to the protection provided to sea turtles from daily surveys for nests

during the sea turtle nesting season (May 1 – September 15) and installation of closures around each nest found, expanding the closures and installing light filter fencing around the nests during the hatch window, relocating nests from areas prone to erosion or frequent flooding, installing turtle friendly lighting on the Seashore and working with the USFWS, the NCWRC, and Dare County to encourage the development of a turtle friendly lighting educational program or a turtle friendly lighting ordinance. The benefits of establishing prenesting closures for birds combined with other areas that are closed to ORVs use either year-round or seasonally such as some of the village beaches and Bodie Island Spit, would close approximately 39 miles of Seashore beach to ORV use during the turtle nesting and hatching season. These closures would minimize potential impacts to nesting turtles, turtle nests and turtle hatchlings in these areas; however, the benefits would be tempered somewhat by the fact that the prenesting areas would only be closed to ORV use from March 15 through July 31, which does not encompass the entire turtle nesting season and ORV corridors would be provided seaward of the prenesting closures at Cape Point and South Point.

ORV and other recreational use would have long-term minor to moderate adverse impacts due to the earlier re-opening of prenesting closures (after shorebird breeding activity has concluded), resulting in increased recreational access throughout the Seashore during the sea turtle nesting season. ORV and other recreational use would have impacts on sea turtles by affecting the beach profile and substrate characteristics in ways that reduce suitability for nesting and hatching success and likely continued closure violations and vandalism. Prohibiting recreational ORV use from 9:00 p.m. to 7:00 a.m. would greatly reduce potential impacts to adult and hatchling turtles caused by night driving. Opening select ORV routes from September 16 through November 15, subject to terms and conditions of a permit, only in areas where there are no turtle nests, would protect turtle hatchlings. Beach fires would still be allowed, but would be prohibited year-round between the hours of 10:00 p.m. and 6:00 a.m., and during the turtle nesting season would be restricted to areas in front of Coquina Beach and Rodanthe, Waves, Salvo, Avon, Buxton, Frisco, Hatteras Village, and the Ocracoke day use areas. While a permit would be required to have a beach fire, allowing beach fires would still cause adverse impacts to adult and hatchling turtles through light pollution. Under the ESA these impacts would result in a finding of may affect/are likely to adversely affect sea turtles because the actions would result in direct or indirect impacts to the species that are not discountable, insignificant, or beneficial. Though there would be beneficial impacts from resources management activities and restrictions on nonessential recreational ORV nighttime driving, the actions under Alternative F would also likely cause adverse effects.

Seabeach Amaranth. Under Alternative F, resources management activities would result in long-term minor to moderate benefits to seabeach amaranth if plants are detected in the Seashore. Benefits would be due to the protection provided by installing closures around plants that are detected, surveying for plants in August when they are visible, installing prenesting and other closures for nesting bird species that overlap seabeach amaranth habitat, and surveying bird and turtle closures for plants prior to reopening these closures to ORV and other recreation use. Approximately 39 miles of beach would be protected by seasonal and year-round VFAs, including Bodie Island Spit. Cape Point and South Point would have an ORV corridor seaward of the prenesting closures that may be closed depending on breeding shorebird buffers. These closures would protect seabeach amaranth and its habitat during these timeframes, but the seasonal closures would allow ORV impacts to occur during the seasons when these areas are reopened.

ORV and other recreational use would have long-term minor to moderate adverse impacts on seabeach amaranth as plants may go undetected and would therefore be unprotected from recreation

use of the Seashore. Seasonal restrictions on ORV use at seabeach amaranth and shorebird prenesting closures would help protect the species from impacts in those areas. Some additional seabeach amaranth habitat would be protected, for in all areas open to ORV use that are not in front of villages, a 32.8-foot (10-meter) wide ORV-free zone would be created in the ocean backshore wherever there is sufficient beach width to allow an ORV corridor of at least 98.4 feet (30 meters) above the mean high tide line. Constructing four new beach access ramps and relocating two existing ramps would eliminate some potential habitat for the species. During seabeach amaranth's dormant season more areas of the Seashore are open to ORV use, and while there would be no plants to be impacted, seeds of the plant could be either pulverized or buried by ORVs driving over them. Under the ESA, these impacts would result in a finding of may affect / likely to adversely affect for seabeach amaranth because the actions would result in direct or indirect impacts to the species that are not discountable, insignificant or beneficial. Though there would be beneficial impacts from resources management activities, the actions under Alternative F would also likely cause adverse effects.

UPDATED RESOURCE INFORMATION

2010 Piping Plover Breeding Summary:

Total Nests to Date	Active Nests	Total Nests Hatched	Total Nests Lost	Total Eggs Hatched	Unfledged Chicks	Lost Chicks	Fledged Chicks
16*	0	11	5	31	0	16	15

* This counts the three egg nest on Ocracoke, found 6/29, as a separate nest, although it is believed that this nest may be a clutch continuation from Nest #15, which was predated by ghost crabs 6/23.

2010 Sea Turtle Nesting Summary: 153 nests (146 loggerhead; 7 green); 112 false crawls

2009 and 2010 Seabeach Amaranth Summary: zero (0) plants found each year

In closing, we look forward to receiving your Biological Opinion on the FEIS preferred alternative (Alternative F). We are available for a conference call or to meet with you as needed during the Section 7 consultation process. Please contact Cyndy Holda at 252-473-2111, ext. 148 to schedule a phone call or meeting.

Sincerely,

Michael B. Murray

Michael B. Murray
Superintendent

Attachments