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08/18/2005 09:00 AM
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To: HATTERAS818 <pfield@cbuilding.org>, <cbi@cbuilding.org>
cc: (bcc: Sandra Hamilton/DENVER/NPS)
Subject: Materials for Pre-Convening

ALL

Please find attached the materials to kick-off the "official" pre-convening for the Cape Hatteras potential Off-Road Vehicle Regulatory Negotiation. It includes a press release, the revised application form, and the revised convening chart.

We've done our best, imperfectly I'm sure, to incorporate your good comments on the application form and chart.

We are sending out today the press release to numerous local and regional outlets. On Monday, we'll make available the attached application form on our website so that is available to a full range of potentially interested applicants. As we get in applications, we'll let you know how things are going.

We look forward to working closely with you to develop recommendations to NPS for a potential reg neg committee membership.

PAT FIELD, ROBERT FISHER, ONA FERGUSON, VERONICA MORRIS



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FOR IMMEDIATE RELEASE: Call for Proposals for Representatives to Cape Hatteras National Seashore Off-Road Vehicle Use Negotiated Rulemaking Process

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HEADLINE: Cape Hatteras Proposed Negotiated Rulemaking Update

Manteo, NC. August 15, 2005 – The assessment of negotiated rulemaking on off-road vehicle (ORV) use on Cape Hatteras National Seashore is moving forward. The assessment team from the Consensus Building Institute (CBI) and RESOLVE is seeking input on proposed representatives for a possible negotiated rulemaking Federal Advisory Committee. A listing of recommended Committee representatives will be included in the CBI/RESOLVE team's final Cape Hatteras National Seashore: Negotiated Rulemaking Feasibility Assessment Report due to the National Park Service (NPS) this fall.

The Committee, if convened, with the support of stakeholder groups and the National Park Service (NPS), would work toward developing an ORV use regulation for Cape Hatteras National Seashore. Executive Order 11644 requires the NPS to develop regulations for parks that allow ORV use.

Organizations that would like to propose someone to sit on the Committee should apply by downloading the Representative and Alternative Proposal Form from the CBI website: www.cbuilding.org on or after August 22, 2005 and submit the completed forms to CBI. The Forms will be accepted until September 22, 2005.

The proposed representative is the person suggested to represent a stakeholder group, and would be the primary contact who would "sit at the negotiating table" during the potential regulatory negotiation process. This person, if recommended by CBI/RESOLVE to NPS, and recommended by NPS to the Department of the Interior, and selected by the Secretary of the Interior, would be appointed to and participate on the Committee, chartered under the Federal Advisory Committee Act. Proposing a representative does not guarantee a seat on the Committee. The Secretary of Interior has the sole and final authority to select Committee members and alternates. Also, proposing a representative also does not commit any organization to participate in the process at this time.

Once the CBI/RESOLVE team has received proposals for representatives and alternates, the team will work with each stakeholder group to determine the group's recommended representatives and alternates. A stakeholder group consists of individual, but similarly focused organizations. Each stakeholder group will have an allotted number of seats on the Committee. For some stakeholder groups, there may be just enough proposed individuals to fill the seats

allocated for that group. For stakeholder groups with more representatives proposed than seats available, the CBI/RESOLVE team would bring the proposed representatives together to assist them in determining the recommended representatives and alternates who can most effectively and legitimately represent the stakeholder group interests in the potential regulatory negotiation. In this way, each stakeholder group has significant influence over the names of its recommended representatives. Some entities, like for the NPS, U.S. Fish and Wildlife Service, the State of North Carolina, and Dare and Hyde Counties, will decide internally on proposed representation.

After receiving the Final Assessment Report with recommended Committee representatives should NPS decide to move forward, NPS would submit a Notice of Intent to form a Negotiate Rulemaking Committee. In this Notice, NPS would officially recommend members and alternates to the Secretary of the Interior. During public comment on this Notice any persons who believe that they will be affected significantly by the special regulation and who believe their interests will not be represented adequately by the persons identified in the Notice are invited to apply for or nominate another person for Committee membership. The public may also comment on the feasibility of proceeding with regulatory negotiation as well. After receiving public comment, the Secretary of Interior would make the final determination whether to proceed with negotiated rulemaking, and if so, to select the Committee members and alternates.

ABOUT THE CONSENSUS BUILDING INSTITUTE AND RESOLVE - CBI and RESOLVE are non-profit organizations that provide mediation and facilitation services for complex policy issues. For its work on the Cape Hatteras National Seashore: Negotiated Rulemaking Feasibility Assessment Report,, the CBI/RESOLVE team is providing independent services with support from the United States Institute for Environmental Conflict Resolution. For more information, please see www.cbuiding.org and www.resolv.org and www.ecr.gov.

**Cape Hatteras National Seashore
Proposed Off-Road Vehicle Use Negotiated Rulemaking Process**

REPRESENTATIVE AND ALTERNATE PROPOSAL FORM

Description

This form is to be used by an organization to propose to CBI/RESOLVE a representative and alternate for participation in a possible negotiated rulemaking to develop a regulation for off-road use within Cape Hatteras National Seashore. This is the first step in convening a negotiated rulemaking, should the process proceed. Completing this form does not commit an organization to participate in the potential negotiated rulemaking, as neither the National Park Service (NPS) nor the stakeholders have decided to go forward with the process yet.

The proposed representative is the person suggested to represent your organization or stakeholder group, who would be the primary contact and “sit at the negotiating table” during the potential regulatory negotiation process. The individual would serve on a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA). This person, if recommended by CBI/RESOLVE to NPS, and recommended by NPS to the Department of the Interior, and selected by the Secretary of the Interior, would be appointed to and participate on the Committee. Your organization might also want to propose an alternate who might fill in for the member when he or she is unavailable to attend meetings. FACA requires that all members and alternates be named in the Federal Register. Alternates cannot be designated ad hoc, from time to time, and “at will.”

Please note that proposing a representative does not guarantee a seat on the Committee. CBI/RESOLVE will work with the proposed representatives *within each stakeholder group* to select among those proposed by individual organizations. On each stakeholder group’s behalf, CBI/RESOLVE will submit the recommended names to NPS in the final Assessment Report. Should NPS decide to go forward with the negotiated rulemaking process, it is then NPS’ responsibility to officially recommend members and alternates to the Secretary of the Interior and for the Secretary to make the final selection of Committee members and alternates. The final NPS recommendation to the Secretary would be made after a 30-day public comment period following publication in the Federal Register of the Notice of Intent to establish a negotiated rulemaking committee. During the public comment period, if members of the public believe the recommended Committee members do not represent their interests they may suggest others for membership. The ultimate authority and decision-making for any such Committee membership always rests with the head of the federal department or agency (i.e. the Secretary of the Interior, in this case).

Instructions

To propose a representative and alternate for your organization to the negotiated rulemaking process, please:

- I. Review the Criteria for Organizations and Representation below

- II. Provide the information requested on the form(s) below
- III. Submit a cover letter on the letterhead of your organization
- IV. Sign the forms below, preferably by the head of your organization
- V. Include contact information for the organization and any brief description of the organization (mission statement, charter, etc.).
- VI. Submit it to the address found at the bottom of this document.

CRITERIA FOR ORGANIZATIONS

Please keep in mind the following criteria for any organization that recommends representatives to the proposed negotiated rulemaking process. The organization should:

- Represent a constituency and broader set of interests than those of a few individuals. The Negotiated Rulemaking Act defines “interest” as, “with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner;”
- Have a membership;
- Have a stake in the numerous issues surrounding off-road vehicle use on Cape Hatteras in particular, or off-road driving on federal lands more generally;
- Be seen as a legitimate representative of the interests described in attached stakeholder chart by those individuals who share that interest and more generally, by the public at large;
- Be able to commit to the negotiated rulemaking as the primary focus of their efforts at addressing off-road driving on Cape Hatteras National Seashore.
- Be committed to a collaborative process and the groundrules of conduct to ensure constructive dialogue.

CRITERIA FOR REPRESENTATIVES

Please keep in mind the following membership criteria for representatives in the negotiated rulemaking process as described in the draft Assessment Report (with the exception of the criterion of meeting location which we would work out with the Committee as it is formed):

- Able to represent their organization or constituency.
- Able to speak with authority and make commitments on behalf of their organization or constituency.
- Seen as a legitimate and capable representative in the eyes of their organization or constituency.
- Willing to complete any necessary federal paperwork for FACA membership.
- Able and willing to abide by the ground rules of the process.
- Able to commit to the negotiated rulemaking as the primary focus of their efforts at addressing off-road vehicle use on Cape Hatteras National Seashore.
- Able to advocate effectively for their organization or constituency's interests and *also* able to consider the perspectives of others and seek common ground wherever possible.
- Willingness to submit and have made available to the public on the NPS website a short bio (during the public comment period on the Notice of Intent)

In short, we recommend that proposed representatives be capable of effectively representing their stakeholder group's interests and also be able to work effectively and collaboratively with others, including those whose views and opinions may be quite different.

In the attached Convening Chart, within stakeholder or "sub" stakeholder groups, we have recommended further specific criteria, when we thought it useful and appropriate. Please note that you need to identify for which stakeholder group on the chart you are submitting your proposal.

CONVENING CHART

The accompanying Convening Chart is a tool to help organizations identify “seats” where they might apply for representation. In order to keep the potential Committee to a manageable size, numbers of seats across a range of stakeholder groups have been allocated by the Assessment Team. This Chart was informed by the fifty-plus interviews conducted by the Assessment Team during the spring of 2005. A draft chart was included in the draft Feasibility Assessment Report issued in June 2005. Numerous comments were received on this chart on format, listed organizations, and number of seats. The Assessment Team did its best to incorporate all these comments.

In determining the allocation of “seats,” the Assessment Team sought to be inclusive of the range of interests and to balance those interests with sufficient representatives from each of a range of possible views. In order for interviewees and others to determine if this recommendation is fair and balanced, it is important to be clear about the decision rule that would we recommend for the Committee. Because the draft Feasibility Assessment recommends a consensus decision rule, interested applicants ought to be less concerned about the exact numbers of seats. Even just one member in a consensus process can raise issues and concerns and in turn, the group has to seek to address those concerns and issues, because agreement requires all members saying “I can live with it” to proceed. However, interested applicants should be concerned and work to ensure that: 1) their interests are represented by an organization or organizations within a stakeholder category; 2) the Chart captures all key interests with a stake in the issues; and, 3) the representatives ultimately recommended to the NPS are capable and skilled, credible, and legitimate.

The Negotiated Rulemaking Act allows for up to 25 members (unless a greater number is determined to be necessary). We have identified up to 28 seats given the range of interests and strength of interest in this issue. Again, please do note that NPS is obligated and will provide an opportunity for the public to comment on the proposed Committee membership and balance if NPS decides to proceed. The public will be able to comment for 30 days once the Notice of Intent to Proceed with Negotiated Rulemaking appears in the Federal Register. The Negotiated Rulemaking Act states: “[p]ersons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice...may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule.”

Information for Organization Proposing a Representative and/or Alternate

Stakeholder Group (please see attached convening chart – please identify one group only)	
Name of Organization	
Year Formed	
Number of Members	
Characteristics of Members (geographic location, typical interests and concerns, other)	
Mission of Organization	
Stake in Off-Road Driving on Cape Hatteras and/or Off-Road Driving on Federal Lands and experience with such issues (please make clear your stake in the issues)	

Include any charter, officers, 501c3 (non-profit) status, or other organizing documents. Please submit this completed form along with those below to **Ona Ferguson** via mail, email, or fax at the address listed on the Proposed Representative Form.

Proposed Representative Information

Stakeholder Group (please see attached convening chart – please identify one group only)	
Name:	
Years with Organization as member and/or staff:	
Mailing Address:	
Phone number (work):	
Phone number (home):	
Email address:	
Fax number:	

In addition to the below information, please provide the following: 1) **a short resume** or biography (**one page or less**) that can be shared publicly with others who ask about the proposed individuals; 2) for transparency and openness, **disclosure of any affiliations** with other similar groups or groups that might also have a stake in the issues (for instance, off-road vehicle or environmental advocacy groups). We do assume that many individuals will have multiple affiliations, and want to ensure that such affiliations are known; 3) **disclosure of any affiliations** with the involved federal agencies (NPS and FWS) such as recent or current consulting contracts, current employment contracts, or familial relations to any current agency staff or appointees.

Signature

Title

Organization

Date

Please submit this completed form to **Ona Ferguson** via mail, email, or fax at:

The Consensus Building Institute
238 Main St, Suite 400, Cambridge, MA 02142

Fax: 617-492-1919
Email: oferguson@cbuilding.org

Proposed Alternate Information

Stakeholder Group (please see attached convening chart – please identify one group only)	[ATTACHED?]
Name:	
Title (if any, within organization):	
Mailing Address:	
Phone number (work):	
Phone number (home):	
Email address:	
Fax number:	

In addition to the below information, please provide the following: 1) a **short resume** or biography (**one page or less**) that can be shared publicly with others who ask about the proposed individuals; 2) for transparency and openness, **disclosure of any affiliations** with other similar groups or groups that might also have a stake in the issues (for instance, off-road vehicle or environmental advocacy groups). We do assume that many individuals will have multiple affiliations, and want to ensure that such affiliations are known; 3) **disclosure of any affiliations** with the involved federal agencies (NPS and FWS) such as recent or current consulting contracts, current employment contracts, or familial relations to any current agency staff or appointees.

Signature

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PRE-CONVENING CHART OF STAKEHOLDERS FOR POTENTIAL REGULATORY NEGOTIATION

STAKEHOLDER GROUP	# SEATS	SUB-STAKEHOLDER GROUPS	POTENTIAL ORGANIZATIONS SUGGESTED BY INTERVIEWEES (I)	SUGGESTED SPECIFIC CRITERIA (if any)
Federal Government	2		National Park Service, CHNS	<ul style="list-style-type: none"> • Superintendent (or Acting) or equivalent
	1		Fish and Wildlife Service, Ecological Services, Raleigh Field Office	<ul style="list-style-type: none"> • Field Supervisor or equivalent
State Government	1		Departments such as the Department of Transportation, Division of Marine Fisheries, etc.	<ul style="list-style-type: none"> • Can represent the range of state interests to the greatest extent possible.
County Government	2		Dare County and Hyde County	<ul style="list-style-type: none"> • Able to represent County government.
Local Government/Associations	3	Local Civic and Homeowner Associations	Organizations such as Hatteras Village Civic Association, the Ocracoke Civic and Business Association, the Rodanthe-Waves-Salvo Civic Association, Greater Kinnakeet Shores Homeowners, Inc., Avon Property Owners Association, Hatteras Landing Homeowners Association, and Frisco and Hatteras Village Homeowners Coalition	<ul style="list-style-type: none"> • Groups able to inform and coordinate with other local civic associations. • Represent the breadth of the Outer Banks geography • Represent the full range of views regarding Park use held by constituents

STAKEHOLDER GROUP	# SEATS	SUB-STAKEHOLDER GROUPS	POTENTIAL ORGANIZATIONS SUGGESTED BY INTERVIEWEES (1)	SPECIFIC CRITERIA (if any)
User Groups (2)	1	Open Access	Groups such as the Outer Banks Preservation Association	
	3	Off-Road Vehicle Use	National groups such as the United Four Wheel Drive Associations. Regional/local groups such as the North Carolina Beach Buggy Association, Capital City Four Wheelers, and 4 Plus Four Wheel Drive Club	<ul style="list-style-type: none"> • Preferably, at least one group representing a national perspective and one group representing more regional/local interests. • Regional/local group can represent and inform a broader coalition of ORV groups.
	3	Recreational Fishing	National groups such as the Recreational Fishing Alliance, and the American Sportfishing Association and regional/local groups such as the Cape Hatteras Anglers Club	<ul style="list-style-type: none"> • Preferably, at least one group representing a national perspective and one group representing more regional/local interests. • Regional/local group can represent and inform a broader coalition of fishermen's groups.

STAKEHOLDER GROUP	# SEATS	SUB-STAKEHOLDER GROUPS	POTENTIAL ORGANIZATIONS SUGGESTED BY INTERVIEWEES (1)	SPECIFIC CRITERIA (if any)
	3	Other, primarily non-ORV users	Groups such as the Surfrider Foundation, Eastern Surfers Association, Cape Hatteras Bird Watchers Club, Cape Hatteras Recreational Alliance, National Recreation and Park Association, American Hiking Society, Outdoor Industry Association, and other uses such as pedestrian access, beach combing and swimming.	<ul style="list-style-type: none"> • Groups able to inform and coordinate with a diverse set of other use groups within this category. • Groups having a clear stake and involvement with off-road driving issues on Cape Hatteras or more generally on federal lands.
Commercial Fishermen	1		Organizations such as the North Carolina Fisheries Association	<ul style="list-style-type: none"> • Able to inform and coordinate with commercial fisherman, primarily fisherman who fish the beach
Businesses	2		Organizations such as the Outer Banks Visitors Bureau, the Outer Banks Chamber of Commerce, the Outer Banks Association of Realtors, the Hyde County Chamber of Commerce	<ul style="list-style-type: none"> • Groups able to inform and coordinate with other business associations and businesses. • Preferably, organizations represent a host of businesses through membership or other affiliation. • Among the three representative organizations, represent a diversity of Outer Banks kinds of

STAKEHOLDER GROUP	# SEATS	SUB-STAKEHOLDER GROUPS	POTENTIAL ORGANIZATIONS SUGGESTED BY INTERVIEWEES (1)	business. SPECIFIC CRITERIA (if any)
Environmental & Natural Resource Conservation Advocates (2)	3	National	Nationally organized groups such as the National Park Conservation Association, Defenders of Wildlife, Bluewater Network, Environmental Defense, Natural Resource Defense Council, and the Wilderness Society	<ul style="list-style-type: none"> Can represent & inform a broader coalition of national environmental interests.
	3	State/Regional/ Local	State or regionally organized groups such as North Carolina Audubon and the Southern Environmental Law Center	<ul style="list-style-type: none"> Can represent & inform a broader coalition of regional, state, and local environmental interests.
TOTAL PROPOSED MEMBERS	28			

(1) Please note that these organizations were suggested by interviewees as possible participants in a negotiated rulemaking process. Please note that, as neutrals, the CBI/RESOLVE team is not endorsing any particular organizations. We will work among those who nominate representatives to “self-select” the representatives and alternates for the potential process to the greatest extent possible, helping all stakeholders to identify representatives who are legitimate, credible, and capable.

(2) Please note that groups who identify themselves primarily as user or access groups may also have strong environmental and conservation values. Likewise, groups who identify primarily as environmental advocacy groups may also have many members who are users of the Park. The distinction we make is for the purposes of convening a negotiating table and is based on how groups characterize their primary mission and objectives. We recognize that individuals who may represent an interest often have multiple interests and affiliations.