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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:

A16

June 6, 2008

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

Dear Mr. Keene,

This letter responds to your letter of May 3, 2008 asking me to remove three members of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore (Committee). Your letter asserts that these committee members are not participating in the Committee in good faith, and that their participation violates Section E of the Committee Charter. In considering your request, I've consulted with the Department of the Interior (Department) Solicitors Office, NPS and Departmental Ethics Offices, the Department Office of Collaborative Action and Dispute Resolution, and others in the National Park Service (NPS) and Department, as well as with the facilitation team.

As the Designated Federal Officer (DFO) for this Committee, I've decided not to recommend any change in the composition of the Committee to the Secretary of the Interior. I respect your opinion, and I understand that a number of committee members are angry and upset due to the lawsuit challenging parts of the Interim Protected Species Strategy and with the resulting consent decree. However, I do not believe the actions of the plaintiffs in this lawsuit constitute a reason for me to recommend their removal. I hope the explanation provided below will be helpful in understanding my rationale.

The development of the Interim Protected Species Management Strategy is a distinct process from the development of the long-term ORV management plan/environmental impact statement and the special regulation for off-road vehicle management. Therefore, I cannot ascribe bad faith in negotiating on the regulation to those members who challenged the legality of the Interim Strategy, particularly when this lawsuit was filed before the issuance of the Charter for the Committee and the adoption of the Committee's ground rules. The consent decree that settled the challenge to the Interim Protected Species Management Strategy explicitly provides that it "shall not be binding on the Reg. Neg." This is a further indication that these processes are separate and distinct. I believe that all of the parties in the lawsuit (plaintiffs, defendants, and intervenors) will be able and willing to discuss and consider options for protecting species other than and including those embodied in the consent decree. For one thing, operating under the consent decree is providing experience for all the parties from which new perspectives may be formed. Additionally, in future meetings all members



of the committee will gain a better understanding of the existing science and how it could be applied to developing species management actions.

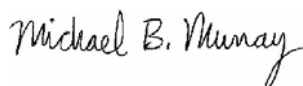
In addition, while I have observed that negotiations among committee members are difficult, I have not observed that any interest is dominating the committee's discussions. I have confidence in the ability of the committee members to keep an open mind and in the ability of the facilitators to assist the committee members so that all interests are able to participate effectively. I was encouraged that members representing different interests were engaged in collaborative dialogue with each other and able to make progress on some issues at the May meeting.

With respect to your concern that the participation of these members in the lawsuit violates Section E of the Rulemaking Committee Charter, I consulted with the Departmental Ethics Office. Section E prohibits any committee or subcommittee member from participating "in any specific party matter including a lease, permit, contract, claim, agreement, or related litigation with the Department of the Interior in which the member has a direct financial interest." The Departmental Ethics Office views this prohibition as applying only to litigation related to specific party matters, meaning litigation related to a transaction or proceeding affecting the legal rights of specific parties. The Departmental Ethics office determined that the subject of the lawsuit—the Interim Protected Species Management Strategy—is not a transaction or proceeding affecting the legal rights of specific parties but, rather, a general policy that affects all who enter the National Seashore. The Departmental Ethics Office determined that, because the lawsuit is not related to a specific party matter, the members' involvement in the lawsuit, including their entitlement to attorneys' fees under the consent decree, does not violate Section E of the charter.

While difficult, NPS has determined that a Negotiated Rulemaking Committee with all key interests represented provides the best opportunity for developing a rule that diverse interests can live with, and that meets the legal and policy requirements of the agency. One of the most important factors in the creation of the Committee, and in the public interest of all Americans, is to provide for a balanced representation of different entities, who, in turn, adequately represent the interests that will be significantly affected by the rule. Without representation of the plaintiff's organizations, any agreement on a proposed rule that the committee reaches could be subject to continuing controversy and possible litigation.

I appreciate your concerns and hope you will continue to participate in the negotiated rulemaking process. I remain convinced that principled interest-based negotiation offers the best chance for a plan and regulation that the park can implement successfully. Thank you for the help you have given us thus far and for your continuing commitment.

Sincerely,



Michael B. Murray
Superintendent

cc: Patrick Field
Robert Fisher
Derb Carter
Jason Rylander
Walker Golder