



United States Department of the Interior

NATIONAL PARK SERVICE

Fort Raleigh National Historic Site Wright Brothers National Memorial

Cape Hatteras National Seashore

1401 National Park Drive

Manteo, NC 27954

252-473-2111



IN REPLY REFER TO:

A18 (CAHA)

September 26, 2008

Mr. Warren Judge, Chairman
Dare County Board of Commissioners
P.O. Box 1000
Manteo, NC 27954

Dear Mr. Judge:

This letter follows up on my email correspondence dated August 28, 2008, regarding your request to videotape upcoming Cape Hatteras National Seashore Negotiated Rulemaking Advisory Committee meetings. As you are aware, at the last advisory committee meeting on September 9, the Committee did not reach a consensus to support videotaping.

Since the meeting, I have consulted with the NPS Environmental Quality Division, DOI Office of the Solicitor, the DOI Office of Collaborative Action and Dispute Resolution, and the U.S. Institute for Environmental Conflict Resolution. Their advice is unequivocal and unanimous that future meetings should not be videotaped. Therefore, as the Designated Federal Officer (DFO) for the Committee, I am respectfully denying your request. This was a difficult decision, as NPS must weigh the benefits of transparency and broad public outreach with the effectiveness of the committee and its intent and purpose. NPS has determined that the potential negative impacts of videotaping on the negotiation process clearly outweigh the potential benefits to the public. Reasons for denying your request include the following:

- At a fundamental level, the Committee operates on consensus, as defined by the groundrules. There was not consensus support of videotaping.
- The intent of Negotiated Rulemaking is to encourage dialogue, creative problem solving, and deliberation focused on outcomes, options, and interests - not positions, passing statements, or "gotcha". Videotaping is likely to reduce idea generation, open dialogue, and joint work.
- Videotaping may distract both Committee members and public participants from focusing on the issues and solving the problems. Videotaping is likely to foster grandstanding and provide an inappropriate outlet for anger and frustration about current conditions, rather than encourage a focus on long-term solutions.
- The process has been a difficult one and the legitimacy of various members has been challenged continuously. Individuals have been singled out on websites, press releases, and other means in a way that creates, at a minimum, the perception of harassment and intimidation. This stifles joint problem solving and threatens the full expression of the

range of views from different perspectives. Given the tenor of conversation to date, videotaping will likely only increase this unhelpful attention on individuals rather than on the issues and joint problem solving.

- The decision was made in the beginning and announced to the Committee that there would not be videotaping or audio-taping of committee meetings. To comply with the Federal Advisory Committee Act (FACA) regulations, NPS has been documenting all advisory committee meetings by producing written meeting summaries, which are published after each full committee meeting. While we recognize the difficulty public may have in attending meetings, we believe that it is important to maintain a consistent approach to documenting the meetings.
- The Negotiated Rulemaking process and NPS efforts provide a level of transparency and public involvement in the process (outlined below) that far exceeds what would happen in a traditional rulemaking/NEPA process.
- The North Carolina open meetings law (N.C.G.S. §§ 143-318.9 through 143-318.18), including the right to record meetings (N.C.G.S. § 143-318.14), apply to any elected or appointed authority, board, commission committee, or other body of the State, or of its political subdivisions, but not to proceeding of the federal government. It should be noted that federal courts, among other government institutions, do not permit videotaping of proceedings for many of the same reasons outlined above.

The Federal Advisory Committee (FACA) process is an inherently public process. The Cape Hatteras advisory committee is composed of citizens representing a diverse range of stakeholders and interests. All meetings of the full Committee are announced in the Federal Register prior to the meeting and are open to the public. Prior to the committee making a decision or official recommendation to the agency, all proposals are deliberated before the full committee in a public meeting. Each committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public. The meeting room selected is sufficient to accommodate a reasonable number of interested members of the public. Any member of the public is permitted to file a written statement with the advisory committee. Although not required, NPS provides opportunities for oral public comment at each meeting. To accommodate public interest in the meetings, the Committee has expanded the amount of comment time for each individual speaker and the public as a whole, and provides two comment periods on the first day of each meeting and one comment period on the second day. Summaries of full Committee meetings are prepared by the facilitators and, after review and approval by the Committee, are made available to the public. The summaries identify issues to be addressed and points of tentative agreement and final agreement and are generally written without attribution. All meeting materials, including meeting summaries, are made available to the public and posted on the NPS planning, environment, and public comment website at:

<http://parkplanning.nps.gov/parkHome.cfm?parkId=358>.

To address concerns about the adequacy of public information related to the negotiated rulemaking process, NPS will reinforce the transparency of the advisory committee process by distributing the following materials to all interested parties via the park's existing ORV management email list serve. Anyone wishing to be added to the emailing list should contact, Cyndy Holda, at cyndy_holda@nps.gov. This information will include:

- Notices of future meetings once published in the Federal Register

- Draft agendas once sent to the Committee
- Final meeting summaries once approved by the Committee
- Subcommittee documents once sent to the Committee. Based on Committee decisions at the September meeting, documents prepared by subcommittees or workgroups that are distributed to the full Committee will be available to the public prior to Committee meetings. Due to the compressed schedule, these documents may become available to the public a few days before the meeting due to subcommittee/workgroup work right up until the Committee meeting.

In closing, I appreciate your concerns and ongoing participation in the negotiated rulemaking process. I remain convinced that principled, interest-based negotiation offers the best chance for a plan and regulation that NPS can implement successfully. Thank you for all the help you have given us thus far and for your continuing commitment.

Sincerely,



Michael B. Murray
Superintendent

cc:

Patrick Field, Consensus Building Institute
Robert Fisher, Consensus Building Institute