

From: [Mike Murray](#)
To: [Wayne Mathis](#)
Cc: [Robert Fisher](#)
Subject: RE: Village Closure Subcommittee
Date: 12/04/2008 09:48 AM
Attachments: [Jan08 Ethics doc.pdf](#)

Wayne,

Thank you for summarizing your view of the situation. It is helpful to hear how others see it.

With regard to "conflict of interest" I have had follow-up discussions with the Solicitors about the specific situation you mention. The legal opinion is that it was known from the beginning that many members of the committee have a personal financial interest in the some of the issues being discussed (whether it be second home/rental property owners in a particular village or business owners near any particular spit or Cape Point). However, this was considered when members were appointed and when the Department provided the ethics guidance that was distributed at the first meeting (attached), The Department's assessment was that none of the "personal interests" rose to the level of a disqualifying "direct financial interest in a specific party matter."



Jan08 Ethics doc.pdf

With regard to village closures, I submitted a new proposal to the facilitators for "safety closures" that perhaps will let us move away from a specified width for village beaches to be open during the off-season. Frankly, I don't see how 10 ft. either way makes any real difference. The real issue is that drivers on the beach need to be cautious around pedestrians, who may not be able to hear vehicles coming up from behind them due to surf and wind noise. If we can address that effectively through some means other than beach width, such as simply emphasizing that vehicles must yield the right of way to pedestrians, then I think pedestrian safety will be served throughout the Seashore and maybe we can get unstuck with the village closure issue.

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"Wayne Mathis"
<dheel@bigfoot.com>

To "Mike Murray" <Mike_Murray@nps.gov>, "Robert

0076072

Fisher" <rcf@fisherccs.com>

12/02/2008 10:58 PM

cc

Subject RE: Village Closure Subcommittee

Robert and Mike:

I shall be candid and frank with you in this response, so please treat this as "privileged" correspondence for your eyes only. My recollections are as follows:

There were elaborate efforts to come to a workable plan for seasonal closures of the Village beaches involving reduced speed limits, corridors of various widths, adjustments of the closure dates, attempts to define periods of non-vehicular user density based on rental occupancy data from Realty Companies as a closure criterion, and separation of the beaches into North and South zones with different closure policies. Ultimately all proposals were met with truculence and intransigence on the part of the stakeholders who own oceanfront property in the South villages. Even reasonable suggestions and pleas for "consistency, simplicity and enforceability" by Mr. Murray were rejected, as were proposals to trade off closures in the villages for guaranteed open beaches elsewhere..

Disregarding the ethical implications and problems stemming from the fact that those oceanfront property owning individuals stand to personally gain financially from a de-facto privatization of the Public beach adjacent to their property, with the inherent Conflict of Interest, their ludicrous, sustained assertion that the presence of as much as a single vehicle on those beaches at ANY time poses an unacceptable imminent and substantial endangerment to ANY potential pedestrian that might be present was the sticking point that proved unamenable to ANY compromise proposed by the majority of the subcommittee. Personally, I cannot reconcile that rationale with the fact that there is a

public roadway at the front of their properties. The only counterproposal from the holdout(s) was total closure to vehicles year round, which was unacceptable to the other stakeholders. When one member stated that he was prepared to sue if anything less than total year round closure was proposed, talks broke down.

Robert, the subcommittee was constituted to propose workable SEASONAL closures to meet REASONABLE safety considerations for times when there were many sedentary, recumbent or pedestrian visitors using the beaches. TOTAL, YEAR ROUND closure to vehicular access is neither JUSTIFIABLE, REASONABLE nor SEASONAL. It is nothing more than a blatant attempt by a few individuals to privatize Public land.

Short or removing the recalcitrant individual(s) who have a financial conflict of interest from the Committee, for reason, I foresee nothing but impasse in further discussions. Consider that during the last Committee meeting, when seasonal vehicular corridors of various minimum widths were proposed before the Committee as a Whole, the adamant inflexibility and unwillingness to negotiate ANY reasonable proposal on the part of the individual(s) was readily apparent to anyone present.

-----Original Message-----

From: Robert Fisher [mailto:rcf@fisherccs.com]

Sent: Monday, December 01, 2008 8:23 AM

To: johnalley@earthlink.net; sonnyduke@aol.com;
MFCREP@bigfoot.com; nonresidentowner@aol.com;
chra07@yahoo.com; kayota@cox.net

Cc: Pat Field; Ona Ferguson; Cyndy Holda;

vsanguinetti@comcast.net; Mike Murray; Paul_Stevens@nps.gov

Subject: Village Closure Subcommittee

All,

Before the September meeting it appeared the subcommittee was on the verge of an agreement on how to handle village closures. From my discussions with many of you it seems there may be a misunderstanding about what happened to that potential agreement.

Please let me know what you considered the terms of the deal to be and what you think happened to derail it. Also, please let me know if there is anything in the NPS Draft EIS alternatives about village closures that you would like the subcommittee to consider or that we might be able to build on. You can send this information to me confidentially or to the whole subcommittee.

Robert

Cape Hatteras National Seashore—Negotiated Rulemaking Committee

Ethics Responsibilities of Members

Background

Individuals appointed to serve as members of advisory committees may come from both the public and private sectors. These individuals provide the Government with needed expert advice and diverse views. Some members may be regular Government employees. Other members may be appointed to serve as special Government employees, i.e., an officer or employee who is retained, designated, appointed, or employed by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days.

However, many advisory committee members do not have any Government employee status. Most of these members will provide services in a non-employee “representative” status. These representative members are specifically appointed to a committee to provide the committee with the points of view of nongovernmental entities or of a recognizable group of persons (e.g., an industry sector, labor unions, or environmental groups, etc.) that have interests in the subject matter under a committee’s charge. Unlike employee members, representative members are not being appointed on a committee to exercise their own individual best judgment on behalf of the Government. Instead, representatives serve as the voice of groups or entities with a financial interest or other stake in a matter before an advisory committee.

Government employees and representatives on advisory committees are not treated the same for purposes of applying Federal ethics rules. Regular and special Government employee members are expected to provide their own independent judgment in committee deliberations. Therefore, they are expected to discuss and deliberate in a manner that is free from conflicts of interest. Consequently, they must comply with applicable conflict of interest laws, standards of conduct rules, and financial disclosure requirements (although, given their limited service as employees, special Government employees are subject to Federal ethics rules in a somewhat less rigorous manner.) In contrast, Federal ethics rules do not apply to those members serving as representatives. However, to ensure that every citizen can have complete confidence in the integrity of the advisory committee process, the National Park Service addresses potential conflicts of interest of representative committee members through the inclusion of certain ethics responsibilities in the committee charter.

Charter Language

“No committee or subcommittee member shall participate in any specific party matter including a lease, license, permit, contract, claim, agreement, or related litigation with the Department in which the member has a direct financial interest.”

Specific Party Matter

In addition to the examples cited in the charter, the term includes grants, applications, enforcement actions, request for a ruling or other determination, controversy, charge, accusation, arrest, investigation, or other matter involving a specific party or parties. It does not include matters of general applicability, such as rulemaking; legislation; the formulation of general policy, standards, or objectives; or other actions of general application.

Direct Financial Interest

The term “direct financial interest” means the financial interest of the member; the member’s spouse, dependent child, household member, or general partner; an organization in which the member is serving as officer, director, trustee, general partner, or employee; or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

Application to This Advisory Committee

The charter language prohibits a committee member from participating, as part of his or her advisory duties, in any committee action regarding a specific party matter, with the Department of the Interior, in which the member has a direct financial interest. In this case, the committee’s function is to assist in the development of special regulations for management of off-road vehicles at Cape Hatteras National Seashore. Unlike a lease, permit, contract, etc., such a regulation is considered a matter of general applicability—not a specific party matter. Accordingly, it is unlikely that a member would be in a position to participate in any specific party matter in the conduct of his or her committee duties. In the unlikely event that a member finds himself or herself in a position to take any committee action regarding a specific party matter with the Department, that could affect his or her direct financial interest, the member should notify the Designated Federal Official and recuse himself or herself from participating in that action. If a member is unsure whether or not recusal is necessary, or has any other questions regarding his or her ethics responsibilities, the member should contact the Assistant Ethics Counselor for the National Park Service, Peggy Moran-Gicker, at (202) 354-1981 or Peggy_Moran-Gicker@nps.gov.