



**INC. VILLAGE OF SALTIRE
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June 27, 2024

SENT BY OFFICIAL WEBSITE AND US MAIL

Alexcy Romero, Superintendent
Fire Island National Sea Shore
120 Laurel Street
Patchogue , NY 11772

Re: Fire Island National Seashore
Off Road Vehicle Management
2024 Environmental Assessment

Dear Superintendent Romero:

The Village of Saltaire has reviewed the Fire Island National Seashore Off-Road Vehicle Management ("ORVM") Environmental Assessment ("EA") dated May, 2024.

Pursuant to Board of Trustees Resolution, and without waiver of or prejudice to the rights of the Village to object to or challenge the process in which the EA was created or the ORVM regulation amendment process has been undertaken, the Village of Saltaire formally objects to the EA as fatally flawed in a manner which, as demonstrated in this letter, requires the EA to be discarded in its entirety, emended and undertaken in a lawful and productive manner.

Please note that earlier in this process, the Village of Saltaire transmitted a Freedom of Information Request to your office and the National Park Service ("NPS") in conjunction with the 2022 actions by the National Park Service-Fire Island National Seashore ("FINS"). The Freedom of Information request sought documents related to the prior environmental study that had been or was in the process of being done regarding the 2022 proposed regulation changes. Despite it being properly made, neither FINS nor NPS ever responded to the request. This unlawful failure on your office's part to respond to the Village's request, in addition to being a violation of the Freedom of Information Act, has significantly hampered the Village's ability to effectively and thoroughly respond to the EA, and is therefore yet another reason why the present, flawed EA should be discarded and emended as needed if this process is to reach a proper and informed conclusion.

Please note further that the Village of Saltaire has neither the authority, resources nor intention of taking over the process of issuing vehicle permits effective throughout the territory of the National Seashore.

The Comments and Objections of the Village of Saltaire that are set forth in this letter are also made to supplement the comments of the counsel of the Fire Island Association, and similarly, the comments of the Fire Island Association are adopted as the comments of Saltaire also.

Comments and Objections to the EA

1. The initial statement contained in the Executive Summary of the EA claims that, “The National Park Service (NPS) proposes changes to Fire Island National Seashore’s (“FINS’ or “Seashore”) 1987 off-road vehicle (“ORV”) regulations to provide appropriate vehicular access to Seashore lands while protecting Seashore resources and safe visitor experiences, consistent with the Seashore’s enabling legislation in 1964.”
 - A. The EA is defective because it never identifies the resources it claims to protect.
 - B. The EA is defective because the EA never identifies the developed communities, which are within the boundaries defined in the enabling legislation, as resources of the Fire Island National Seashore.
 - C. The NPS and the EA state that the change in the permit regulations will “provide access to Seashore lands” but fatally fail to acknowledge that in order to access those lands, particularly when the ocean beach is closed due to beach erosion or for protection of endangered species, the permitted vehicles will have to pass through the municipal infrastructure systems of Saltaire and other hamlets and municipalities, which will have significant financial, aesthetic, quality of life, traffic, noise and other impacts that are not considered in the EA.
 - D. The EA fails to acknowledge that for most visitors and residents, the primary mode of transportation within the Seashore is by foot or bicycle, and consequently fails to identify the impact the increased vehicular traffic envisioned by FINS’s preferred alternatives will have on the safety and well-being of the public, especially children, the elderly and handicapped individuals.
 - E. The EA fails to identify or assess the fact that the preferred alternative, which would increase the number of vehicle permits by approximately 53% could have a deleterious impact on the viability of off-season ferry service, particularly for the west end communities, thereby resulting in a potential reduction or elimination of ferry service. Shifting passenger access away from boats and toward vehicle transportation will impose severe hardships on residents who rely on ferries, while increasing problems with the very permitting process of which FINS is trying to divest itself.
 - F. Nowhere in the report is the term “appropriate vehicular traffic”, on which the EA states it is based, identified. The Proposal for increasing vehicular traffic does not have a proper motivation or foundation without first identifying the term and justification for it.
 - G. The term “appropriate vehicular traffic” appears to be improperly created from the vague and nonspecific “permit waiting list” which is not analyzed or determined in any way to actually correspond to the number of permits optimally necessary for Fire Island, or will or may be sought under Alternatives B or C.
 - H. The pedestrian and traffic system on Fire Island is already a patchwork of narrow, and in many areas nonexistent, sand-paths and walks that vary in size, materials, width and extent, are locally financed and maintained, and which are already used to the maximum by vehicles of all kinds as well as pedestrians and bicycle traffic. Drivers, whether residents, contractors, carters, government or emergency services, must constantly pull off the road and onto adjacent walks or paths in order to allow for the passage of traffic traveling in the opposite direction, causing delays, backups and blockages of all traffic, within communities as well as empty tracts. The EA failed to address the impacts increased vehicular traffic will have on the free flow of traffic of all types (including pedestrians), in particular delays to ambulance, fire, police and other emergency vehicles engaged in life-saving operations. on that fragile infrastructure and surrounding environment.

- I. Nor did the EA address the effects of increased vehicular traffic on the fragile infrastructure of the island's communities and its delicate ecosystem, or the ability of the island's roads and infrastructure to absorb the massive increases in traffic proposed by Alternatives B and C.
 - J. The EA reads as if written by someone who had never visited the island, had knowledge of its communities or ecosystem, or seen its complex flow of traffic, and is consequently entirely mistaken in its operating premise that the fact that there has been little change to vehicle regulations since 1987 justifies or requires significant changes to those regulations in 2024. In fact, the reason there have been no substantial changes is because the capacity of the island's network of narrow walks and roads is already operating at a level that is barely safe and cannot sustain the massive changes FINS seeks to unilaterally impose on Fire Island, its communities, residents and visitors.
 - K. Though mandated to do so by 40 CFR 1052.14, the EA fails to properly identify a viable No Action Alternative, stating "because current ORV management practices have essentially modified the 1987 regulations, the no-action alternative is **not selectable**". This is a fatal defect, in that the EA needs to have a viable No Action Alternative, pursuant to the NPS's Supplemental Guidance for EA preparation which states (on Page 2) that, "...in other words, the no action alternative describes the day-to-day operations of running the park as it relates to the preferred alternative in this document. . It does not imply or direct discontinuing day-to-day maintenance and repairs or stopping previously approved plans." The operational modifications made to the 1987 regulations and currently in effect should have been included as part of the No Action alternative, and not used as reason to declare that there cannot be a selectable No Action Alternative. The premise of FINS's position in the EA, that a No Action Alternative is unselectable, is improper and invalidates the entire EA process.
2. The EA misleadingly pretends that it is the report of a study of a permit program for off-road driving on the ocean beaches. A reader would be misled into believing that this pertains solely to vehicular access onto and off of the island's beaches.
 - A. In fact, while the subject of driving on the ocean beaches during limited times of the year is included, the permit is actually for driving throughout the Seashore, and in particular on the narrow walks and other roadways that are part of the municipal infrastructure of the island's communities, including the boardwalks erected in the Village of Saltaire. Like every other community, but to a greater extent than most, Saltaire will bear an enormous financial, safety, and quality of life burden resulting created by the issuance of additional permits. The EA is defective because it never identifies the developed communities, which are within the boundaries of the Seashore as defined in the enabling legislation, as resources of the Fire Island National Seashore.
 - B. The impacts to Saltaire will be particularly significant since all traffic to and from those areas of the Seashore east of the hamlet of Kismet must pass through Saltaire, primarily by traversing its sole east-west, 8-foot-wide walk, Lighthouse Promenade, a fact that is improperly ignored by the EA.
 3. The EA does not comply with the requirements of an environmental assessment as set forth under NEPA, which require an assessment of all potential impacts, not just the "cherry-picked" impacts on unspecific Federal "resources". There are significant and numerous local resources and infrastructure that will be affected that are not addressed in the report.

A. The EA is defective because in the Alternatives Considered Section (Page C-1), the EA states:

“Several issues and impact topics were considered during the development of the environmental assessment (EA) but were dismissed from detailed analysis for one or both of the following reasons:

- *Potential environmental impacts associated with the issue are not central to the proposal or of critical importance; or*
- *A detailed analysis of environmental impacts related to the issue is not necessary to make a reasoned choice between alternatives.”*

B. The EA then dismisses the vast majority impact topics typically analyzed in an EA. This is a clear abdication of FINS’s responsibility under the NEPA rules and the NPS’s supplemental guidance, and explains why the EA did not declare an Environmentally Preferred Alternative because FINS blatantly and capriciously chose not to investigate the environmental impacts of the proposed alternatives in order to justify its pre-determined conclusions. This failure is yet another fatal flaw of entire EA process.

4. The “Number of Trips” section contains one of the most egregious flaws of the Report, previously identified, which while confirming that western communities, including Saltaire, will have about a 400% greater trip impact than eastern communities, fails to address the impacts of this additional traffic anywhere in the Report. This flaw in the EA is particularly significant since, as previously noted, all contemplated traffic must pass through Saltaire, and the narrow walkway and beach in Saltaire are fragile and often crowded, and the costs of maintenance of each are funded by the Village’s taxpayers.

5. Wildlife. The EA correctly identifies that there are endangered species of wildlife on the shore and dune areas of the beach that will be affected by driving throughout the year, but particularly during the period from March through August (actually September).

A. The proposed time period during which driving permits will be in force includes two months of the piping plover nesting season. This is inconsistent with FINS’s duty to protect wildlife, specifically in this instance, plovers. Further, the misidentified nesting season is not the correct period to assess. There is a nesting season, but there are also courting and fledgling seasons, with many of the endangered birds now producing two or more broods in an extended season. The permit regulations that provide for unrestrictive driving from March through May and then re-started in the early fall will cause significant damage to plovers and other wildlife, and must be reconciled.

B. There are several errors in statements regarding endangered species and plant life, which must be corrected including but not limited to the length of the protected season (significantly longer than stated), the location and extent of coverage of protected and important vegetation, and other factors.

C. The EA did not assess *any* impact, including environmental, on the communities when the beach is closed during the above-mentioned wildlife seasons and *all* traffic is forced to travel along the interior pathways.

D. The statements made by FINS in the EA are contrary to the positions of other Federal agencies regarding wildlife, including but not limited to the US Fish and Wildlife Service. The significance of the protection of this species, which is important to other Federal agencies, was ignored by the FINS and the EA.

E. NEPA provides for a Lead Agency, which apparently may be the NPS but also provides for one or more “cooperating agencies”, which should have been included in the EA process due to the range, number and complexity of its potential impacts. In the case of the EA, the US Fish and Wildlife

Service, the agency responsible for the protection of the several endangered species that will be negatively impacted by this improper EA, should have been and now should be named as a “cooperating agency” in this matter, as stated in NEPA policy:

“Cooperating Agency. A federal, state, tribal or local agency having special expertise with respect to an environmental issue or jurisdiction by law may be a cooperating agency. A cooperating agency has the responsibility to: assist the lead agency by participating in the NEPA process at the earliest possible time participate in the scoping process develop information and prepare environmental analysis that the agency has special expertise in make staff support available.”

6. Socioeconomic impact. There are several incorrect statements throughout this Section of the EA.
 - A. The discussion about the impacts of increased permits during the shoulder seasons is based on inaccurate information. The changes in many people’s lifestyles in the wake of COVID and changing weather patterns has resulted in many more homeowners now using their homes during these periods, meaning more people will be impacted by increased traffic.
 - B. The theory of the author of the EA, who is obviously unfamiliar with Fire Island, that construction costs will be reduced if more permits are issued, is completely unsupported by any data and is not accurate. In fact, removing the ability of these vehicles to perform necessary tasks, especially carting construction debris or garbage off-island, will actually serve to vastly increase costs to residents and businesses while adding to the number of vehicles on the island.
 - C. The claim that impacts that are acknowledged in this section are “not a concern of most residents” has no basis in fact and, for one example, does not address the issues faced by Saltaire, through which virtually the entirety of any additional driving must pass.

7. Purpose and the need for action.

Chapter 1 of the EA states that the purpose of the EA is as follows:

“This EA examines potential impacts on affected resources and complies with the National Environmental Policy Act (NEPA) to (1) provide an analysis of a reasonable range of alternatives to meet objectives of the proposal; (2) evaluate potential issues and impacts on the Seashore’s resources and values; and (3) identify mitigation measures to lessen the degree or extent of these impacts. The NPS conducted internal, public, and agency scoping to assist with the development of this document.”

The purposes of an EA under NEPA guidelines are not as stated in this EA. However, because NEPA requires the EA to review all potential impacts on the environment, and not, as was done in this EA, just the impacts on Federal Resources, the EA is flawed for this reason also.

8. Emergency Services

In the same way that the EA ignores the impacts on visitor and resident pedestrian and bicycle activity and many other important impacts and factors, the EA fails to mention that all emergency service vehicles (including fire, ambulance and police) gain access to emergency scenes and off-island medical facilities on the same narrow and fragile network of walks and sand roads on which the NPS proposes to increase traffic, which will have a significant, and potentially fatal, negative impact on the ability of those organizations to provide emergency services and to reach and address the emergencies occurring in their communities.

In conclusion, the Village of Saltaire, for the reasons stated above, hereby requests:

- (1) That the NPS abandon the proposed rule-making and retain the current Regulations and current implementation policies; or in the alternative,
- (2) That in the event the NPS persists with the current process, the Environmental Assessment be re-done in accordance with the comments in this letter, the comments of the FIA, and most importantly in full conformance with all federal laws, NEPA and NPS requirements, the NPS enabling legislation of the Seashore, and the Fire Island General Management Plan, all of which have been largely ignored in the process up to this point.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hugh A. O'Brien".

Hugh A. O'Brien, Mayor
For the Board of Trustees and the Village of Saltaire

cc: Office of Jurisdiction and Regulations
National Park Service
1849 C Street NW
Room 2353
Washington, DC 20240

Office of Policy
National Park Service
1201 I Street NW
7th Floor
Washington, DC 20005