

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Wilderness Watch
P.O. Box 9175
Missoula, Montana 59807;

Civil No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Defenders of Wild Cumberland, Inc.
P.O. Box 5489
St. Marys, Georgia 31558;

And

Public Employees for Environmental
Responsibility
2001 S Street, N.W., Suite 570
Washington, D.C. 20009;

Plaintiffs,

Plaintiffs' Counsel:

vs.

Fran P. Mainella, Director,
National Park Service
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Daniel P. Meyer, Esquire
General Counsel, PEER
2001 S Street, N.W., Suite 570
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D.C. Bar No. 455369

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Wilderness Watch, Defenders of Wild Cumberland, and Public Employees for Environmental Responsibility, for their complaint against defendant Fran P. Mainella, Director of the National Park Service ("NPS"), United States Department of the Interior, state and allege:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201 as this action presents cases and controversies under the Wilderness Act, 16 U.S.C. §§ 1131-1136; the National Environmental Policy Act, 42 U.S.C. §§ 4321, 4331-4332 (“NEPA”); the Federal Regulations, 36 C.F.R. Parts 1 and 5; and the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”).

2. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

3. Venue is proper in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(e)(1) as it is the district in which the Defendant resides.

PARTIES

4. Plaintiff Wilderness Watch is a nonprofit charitable organization incorporated in the state of Montana in 1989 and having its principal office at 208 E. Main St., Missoula, Montana 59802. Wilderness Watch was formed to ensure the preservation and enhancement of public lands in the United States designated by Congress as Wilderness Areas and as Wild and Scenic Rivers. Wilderness Watch has a chapter in the state of Georgia. Wilderness Watch’s members use and enjoy the natural resources of the Cumberland Island Wilderness and are harmed by the NPS’s issuance of a permit authorizing the Greyfield Inn to engage in motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness. Wilderness Watch’s members are further

harmed by NPS's operation of its own motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness.

5. Plaintiff Defenders of Wild Cumberland ("DWC") is a nonprofit charitable organization incorporated in the state of Georgia in 1995 and having its principal offices at 1037 Greenwillow Drive, St. Marys, Georgia, 31558. Its goal is to preserve as Wilderness the lands, bays, marshes, and beaches of Cumberland Island National Seashore and Cumberland Island Wilderness and to ensure that the areas are managed in accordance with the laws governing such areas. DWC has 55 members, and they regularly use and enjoy the natural resources of the Cumberland Island Wilderness and are harmed by the NPS's issuance of a permit authorizing the Greyfield Inn to engage in motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness. DWC's members are further harmed by the NPS's operation of its own motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness.

6. Plaintiff Public Employees for Environmental Responsibility ("PEER") is a national nonprofit charitable organization of local, state, and federal resource professionals. PEER was incorporated in the District of Columbia in 1992, having its principal offices at 2001 S Street, N.W., Suite 570, Washington, D.C. PEER was founded to monitor natural resource management agencies and to organize a broad base of support among employees within local, state, and federal resource management agencies. Members of PEER have retreated to Cumberland Island to partake of its wilderness characteristics and intend to do so again. Twenty-five PEER members live within an hour of Cumberland Island and another 115 live within a half-day's drive. PEER's members are harmed by the NPS's issuance of a

permit authorizing the Greyfield Inn to engage in motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness. PEER's members are further harmed by the NPS's operation of its own motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness.

7. Defendant Fran P. Mainella, Director of the National Park Service, United States Department of the Interior ("NPS"), is sued in her official capacity. The NPS is an agency of the United States Department of the Interior, with responsibility for, *inter alia*, the conservation and protection of National Parks and National Seashores in the United States, including the Cumberland Island National Seashore and the Cumberland Island Wilderness. As Director of the NPS, defendant is legally responsible for permits authorizing the Greyfield Inn to conduct motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness and for the actions of NPS officials who regularly conduct motorized vehicle tours through and within the Cumberland Island Wilderness and potential Wilderness.

STATUTORY AND REGULATORY BACKGROUND

The Wilderness Act of 1964, 16 U.S.C. §§ 1131 - 1136

8. Congress enacted the Wilderness Act in 1964 to "establish a National Wilderness Preservation System for the permanent good of the whole people" Congress intended that the Act would secure for present and future generations of Americans an "enduring resource of wilderness" by creating areas that "shall be administered for the use and enjoyment of the American people in such a manner as to leave them unimpaired for future use and enjoyment as wilderness" 16 U.S.C. § 1131(a).

9. The Wilderness Act distinguishes between lands that are to be made accessible to the public through the use of modern conveniences, like motorized vehicles, and those lands which are to be preserved, maintained, and managed as wilderness, accessible only by human effort. The Wilderness Act defines “wilderness” as:

[A]n area where the earth and its community of life are untrammelled by man, where man himself is a visitor and does not remain. An area of wilderness is further defined to mean . . . an area of undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which 1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; 2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; 3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and 4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

16 U.S.C. § 1131(c) (hereinafter “Wilderness”).

10. The United States Congress can designate an area for preservation and management as Wilderness under the meaning of the Wilderness Act. 16 U.S.C. § 1132(c).

11. Under the Wilderness Act, the “agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b).

12. The Wilderness Act strictly limits the type of activities allowed within Wilderness:

Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area, and except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment . . . no other form of mechanical transport, and no structure or installation within any such area.

16 U.S.C. §1133(c).

13. The Wilderness Act allows commercial services in the Wilderness only “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes” of a Wilderness area. 16 U.S.C. §1133(d)(5).

National Environmental Policy Act, 42 U.S.C. §§ 4321, 4331-4335

14. Congress intended that the National Environmental Policy Act (“NEPA”) would “encourage productive and enjoyable harmony between man and his environment; [] promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] enrich the understanding of the ecological systems and natural resources important to the Nation.” 42 U.S.C. § 4321.

15. To achieve this goal Congress mandated that for every major federal action significantly affecting the quality of the human environment, federal agencies must prepare a detailed statement on the environmental impact of the action, including analyses of unavoidable adverse environmental effects and of alternatives to the proposed action. 42 U.S.C. § 4332(2)(C).

16. All federal agencies must study, develop, and describe alternatives to recommended courses of action for any federal proposal that involves unresolved conflicts concerning the alternative uses of available resources. 42 U.S.C. §4332(2)(E).

17. NEPA's implementing regulations, promulgated by the Council on Environmental Quality, 40 C.F.R. §§ 1500-1508.28, provide that:

NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.

40 C.F.R. § 1500.1(b).

18. NEPA's implementing regulations also require preparation of an environmental review document for all agency actions with potential environmental consequences. 40 C.F.R. §§ 1501.3 (creation of an environmental assessment pursuant to agency rules), 1501.4 (creation of an environmental impact statement pursuant to agency rules), 1507.2(d) (agency must "study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources").

19. Among the factors the regulations indicate determine whether an environmental review document must be prepared are: the context of the proposed action, 40 C.F.R. § 1508.27(a); whether the action is "highly controversial;" whether its "effects . . . are highly uncertain or involve unique or unknown risks;" its precedential impact and its ongoing nature; or whether the action threatens a violation of federal law, 40 C.F.R. § 1508.27(b)(4)-(7), (10). The implementing regulations of NEPA require the completion of the

environmental documentation that examines the direct, indirect, and cumulative effects of the proposed federal action. 40 C.F.R. §§ 1500.3, 1508.7, 1508.9.

20. The Department of the Interior's Supplementary Instructions (NPS Departmental Manual: NEPA Procedures) for implementing the NEPA regulations, provide that environmental review documents must be prepared for actions which may:

- 2.1 Have significant adverse effects on public health or safety.
- 2.2 Have adverse effects on such unique geographic characteristics as . . . wilderness areas
- 2.3 Have highly controversial environmental effects.
- 2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- 2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- 2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.
- ...
- 2.10 Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

49 Fed. Reg. 21437, 21439 (May 21, 1984).

21. Under the NPS Manual governing the management of Wilderness, managers of Wilderness areas are required to evaluate proposals having the potential to impact Wilderness resources in accordance with NEPA, and managers "contemplating the use of [] motorized equipment or mechanical transportation within wilderness must consider

the impacts to the character, aesthetics, and traditions of wilderness, before considering the costs and efficiency of the equipment.” National Park Service, Management Policies 2001, Chapter 6, Wilderness Preservation and Management, § 6.3.4.3 (Dec. 2000). Specifically managers must:

[T]ake into account wilderness characteristics and values, including the primeval character and influence of the wilderness; the preservation of natural conditions (including the lack of man-made noise); and assurances that there will be outstanding opportunities for solitude, that the public will be provided with a primitive and unconfined type of recreational experience, and that wilderness will be preserved and used in an unimpaired condition.

Id.

National Park Service Organic Act and Regulations

22. The Organic Act of August 25, 1916 established a National Park Service to administer the national parks, monuments and other reservations under its care for the fundamental purpose of conserving “. . . the scenery and the natural and historic objects and the wild life (sic) therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1.

23. In 1978 Congress prescribed that, for the National Park System, “[T]he authorization of activities . . . shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.” 16 U.S.C. § 1a-1. Pursuant to these laws, the National Park Service (“NPS”) has promulgated regulations governing the limited bases

upon which it can permit a private party to engage in an activity otherwise prohibited or restricted in an area under its jurisdiction. According to these regulations, the permit must first be authorized by another regulation found in the Code of Federal Regulations (“C.F.R.”), Title 36, Chapter I. Second, the permit must be “consistent with applicable legislation, Federal regulations, and administrative policies,” and cannot adversely impact the “avoidance of conflict among visitor use activities.” 36 C.F.R. §1.6(a).

24. NPS must deny a request for a permit for an otherwise prohibited or restricted activity if the permit is not authorized by regulations set forth in 36 C.F.R. Chapter I (Parts 1-199). Further, if issuance of a permit is inconsistent with applicable legislation, or its issuance would create a conflict between visitor use activities, then NPS must deny the permit. 36 C.F.R. §1.6(d).

25. NPS regulations prohibit the use of commercial vehicles within park areas:

The use of government roads within park areas by commercial vehicles, when such use is in no way connected with the operation of the park area, is prohibited, except that in emergencies the Superintendent may grant permission to use park roads.

36 C.F.R. § 5.6(b).

26. The NPS regulations define commercial vehicles as, “trucks, station wagons, pickups, passenger cars or other vehicles . . . used as an incident to providing services to another person, or used in connection with any business.” 36 C.F.R. § 5.6(a).

27. NPS may issue a permit for commercial vehicles only when “such use is necessary for access to private lands situated within or adjacent to the park area, to which access is otherwise not available.” 36 C.F.R. § 5.6(c).

*The Cumberland Island National Seashore Act And
The Cumberland Island Wilderness Act*

28. Recognizing the unique natural habitats of Cumberland Island and the importance of preserving and maintaining the Island in its natural state, Congress established the Cumberland Island National Seashore on October 23, 1972. The boundaries of the national seashore encompassed the entire island. 16 U.S.C. § 459i. As a national seashore, Cumberland Island is managed by the NPS, with whom lies all responsibility for enforcement of park service regulations. Congress directed that NPS protect Cumberland Island “in accordance with the provisions of the Act of August 25, 1916. (39 Stat. 535; 16 U.S.C. §§ 1, 2-4), as amended and supplemented . . .” 16 U.S.C. §459i-5(a).

29. In 1982, Congress, under the authority of the Wilderness Act, designated an area of eight thousand eight hundred and forty (8,840) acres as the Cumberland Island Wilderness and an additional eleven thousand seven hundred and eighteen (11,718) acres as potential Wilderness, consisting of a large portion of the northern two-thirds of the island. An Act to Correct the Boundary of Crater Lake National Park in the State of Oregon, and For Other Purposes, § 2, P.L. 97-250, 96 Stat. 709 (1982).

30. Congress intended that the Wilderness be managed by the Secretary of the Interior “in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness areas.” P.L. 97-250 § 2(c).

31. Under Public Law 97-250, each of the tracts of land that make up the 11,718 acres of potential Wilderness on Cumberland Island are to become Wilderness once all uses on such land that violate the Wilderness Act have ceased on that tract. P.L. 97-250

§ 2(a). The area of potential Wilderness consists largely of the lands and salt marshes surrounding the Wilderness. The potential Wilderness is comprised of areas surrounding the Wilderness, including that portion of the the Settlement and Half Moon Bluff Historic District (“the Settlement”) at the north end that is not already within the Wilderness. It also includes the narrow corridor of the Main Road extending from the southern boundary of the Wilderness to Plum Orchard, but does not include the section of the Main Road north of Plum Orchard, as this section of the Main Road is Wilderness.

32. Under Congress’ express designation and under NPS’s own internal guidelines, NPS must manage potential Wilderness in the same manner as Wilderness.

Administrative Procedure Act, 5 U.S.C. §§ 701-706

1. The Administrative Procedure Act (“APA”) provides for judicial review of agency action alleged to violate applicable law, such as a decision to issue a permit to a private party to operate a commercial, motorized vehicle tour through designated Wilderness and the decision by an agency to conduct its own motorized vehicle tours through Wilderness or potential Wilderness. A reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). A reviewing court shall also compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

FACTS

An Overview Of Cumberland Island

2. Cumberland Island is the largest undeveloped barrier island on the eastern seaboard. It is located approximately one mile off the southern coast of Georgia, just north

of the Florida state line and just east of the Intercoastal Waterway. The island consists of 36,415 acres, and it is 17.5 miles long and from less than one to three miles wide. The ecology of Cumberland Island is particularly unique. The island harbors three distinct ecosystems: saltwater marshes and tidal creeks; a dense maritime forest of yellow pines and sprawling live oaks; and an unspoiled white sand beach with an extensive system of permanent and shifting sand dunes. These three ecosystems provide a home for numerous plant and animal species, some of which are protected under Federal legislation.

3. Unlike many of the barrier islands, such as Jekyll Island, St. Simon's Island, Cape Hatteras, Hilton Head, Nags Head, and Cape Canaveral, Cumberland Island is almost entirely undeveloped. Nearly all of the island remains in its natural state. The existing development on the island consists largely of two docks on the southern end of the island, called Sea Camp and Dungeness; a narrow one-lane dirt road called the Main Road or Grand Avenue, which begins at the northern boundary of the Wilderness and runs south through the island and has a number of small roads leading from it; an old, dilapidated plantation called Plum Orchard, which sits on the western shore of the island which is completely surrounded by Wilderness, yet easily accessible by water; and historic sites called the Settlement and Half Moon Bluff/High Point, located on the northern end of the island in potential Wilderness and Wilderness. There is one commercial establishment on the island, the Greyfield Inn, a small and exclusive inn with rooms costing between \$395 and \$450 per night.

4. The entirety of Cumberland Island is readily accessible by foot. The terrain is generally flat, and it is between a two to two and a half mile walk from the southern

boundary of the Cumberland Island Wilderness to Plum Orchard. From Plum Orchard to the Settlement, it is approximately six miles. The majority of Cumberland Island's visitors do not stay overnight, taking day hikes throughout the Wilderness and the rest of the island.

5. Given its lack of development, Cumberland Island plays an important role in bird and animal migrations. Cumberland Island serves as a home, at some point in the year, to over 300 species of birds, including the federally protected wood stork and piping plover. In addition, the Island's beach provides an important nesting area for sea turtles. Annually, a large number of the threatened loggerhead sea turtles nest on the Island's beaches and dunes from April through October. In April 2001, the Island recorded at least two nestings of the largest of the world's sea turtles, the leatherback, which is federally listed as endangered worldwide.

6. In further recognition of the unique and important ecological value of Cumberland Island to the world community, the United Nations Economic, Scientific and Cultural Organization ("UNESCO") named Cumberland Island an International Biosphere Reserve in 1984. Globally, there are 411 sites in 94 countries designated as International Biosphere Reserves.

7. Each year thousands of hikers, backpackers, kayakers, and canoeists travel to Cumberland Island to experience the wild nature of the Island, to find refuge in its solitude, and to witness the barrier islands of the southeastern United States seaboard as they were prior to modern life. In an effort to maintain Cumberland Island's opportunities for solitude, the NPS limits the number of people allowed to visit the Island to three hundred per day.

Authorizing Greyfield Inn To Conduct Motorized Vehicle Tours Through The Wilderness

8. The Greyfield Inn lies just north of the dock at Sea Camp and a couple of miles south of the Wilderness. The Greyfield Inn provides its overnight guests with the opportunity to go on a motorized tour of the island, including through the Cumberland Island Wilderness and potential Wilderness.

9. The authority to conduct these tours comes from permits issued by NPS. On January 17, 2002, NPS issued the Greyfield Inn a six-month permit to conduct motorized commercial tours throughout the island, including throughout the Cumberland Island Wilderness ("NPS Permit"). The NPS Permit allows the Greyfield Inn to drive anywhere in the Wilderness it chooses to drive without limitation. NPS issued the permit pursuant to its own regulations, 36 C.F.R. §§ 1.6(a) and 5.3.

10. NPS "categorically excluded" the NPS Permit from NEPA review.

11. On information and belief, the Greyfield Inn has been conducting tours through the Cumberland Island Wilderness, the potential Wilderness, and up to the north end of the Island for approximately ten years. During this time, NPS has issued Greyfield Inn several permits, which were all issued for six-month terms, although not consecutively.

12. On information and belief, every NPS permit issued to the Greyfield Inn was categorically excluded from NEPA review despite their obvious cumulative impacts.

NPS's Own Motorized Vehicle Tours Through The Wilderness

1. Since 1999, the NPS has conducted motorized tours in a 15-passenger van through the Cumberland Island Wilderness and potential Wilderness. The NPS conducts motorized vehicle tours three times a week to the Plum Orchard historic site and once a

month to the Settlement located on the north end of the Island. Both of these motorized tours travel through the Cumberland Island Wilderness and potential Wilderness along the Main Road.

2. In making the determination to conduct these tours, NPS completed two Minimum Requirements Determinations (“MRD”), without public notice or comment and without any accompanying NEPA documentation.

COUNTS RELATED TO THE NPS PERMIT

COUNT I

Violation of the Wilderness Act, 16 U.S.C. § 1133, and the APA, 5 U.S.C. § 706

3. Plaintiffs repeat and reallege the foregoing allegations.

4. Under the Wilderness Act, and subject to valid existing rights, there can be no motorized vehicle traffic within the boundaries of designated Wilderness absent that which is necessary to meet the minimum requirements for the administration of the area for the purpose of protecting the area’s Wilderness character. 16 U.S.C. § 1133(c).

5. Under the Wilderness Act, Wilderness areas shall be “area[s] where the earth and its community of life are untrammelled by man . . . [that] has outstanding opportunity for solitude or a primitive and unconfined type of recreation . . .” 16 U.S.C. § 1133(c).

6. The Wilderness Act prohibits the existence of commercial enterprises within a Wilderness unless the commercial service that is “necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” 16 U.S.C. § 1133(d)(5).

7. The NPS Permit authorizes a commercial enterprise for an activity that is not proper for realizing the recreational or otherwise Wilderness purposes of the Wilderness and potential Wilderness on Cumberland Island.

8. By issuing a permit to the Greyfield Inn to conduct commercial, motorized vehicle tours of the potential Wilderness and Wilderness on Cumberland Island, NPS has acted arbitrarily and capriciously and in violation of the Wilderness Act and hence also in violation of the APA. 16 U.S.C. §§ 1133(c), 1133(d)(5); 5 U.S.C. § 706(2)(A).

COUNT II

Violation of the National Environmental Policy Act, 42 U.S.C. § 4332, NEPA's Implementing Regulations, 40 C.F.R. §§ 1500-1508.28, NPS's Supplemental Instructions, 49 Fed. Reg. 21437, and the APA, 5 U.S.C. § 706

9. Plaintiffs repeat and reallege the foregoing allegations.

10. NEPA requires that federal agencies engage in environmental review of all major federal agency actions that have the potential for significant environmental impacts. 42 U.S.C. § 4332(2)(A).

11. NEPA requires that federal agencies consider reasonable alternatives to actions that significantly affect the quality of the environment or that are highly controversial in nature. 42 U.S.C. § 4332(2)(C), (E).

12. NEPA regulations require the preparation of environmental review documents—either an environmental assessment or an environmental impact statement—on all agency actions that have the potential to affect the environment at any level. 40 C.F.R. §§ 1501.3, 1051.4.

13. The NPS's Supplemental Instructions regarding NEPA, 49 Fed. Reg. 21437, and the Council of Environmental Quality's regulations implementing NEPA, 40 C.F.R. §§ 1500-1508.28, require NPS to prepare environmental review documents analyzing uses of Wilderness that may have an adverse impact on the environment, that threaten to violate a federal law, that establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects, or that are controversial.

14. NPS's Wilderness Management manual requires managers to comply with NEPA and to specifically consider Wilderness characteristics and values including outstanding opportunities for solitude and the ability to engage in a primitive and unconfined type of recreation free from man-made noise when considering the use of motorized equipment or mechanical transport. National Park Service, Management Policies 2001, Chapter 6, Wilderness Preservation and Management, § 6.3.4.3 (Dec. 2000).

15. Issuing a permit to conduct commercial motorized vehicle tours through potential Wilderness and Wilderness on Cumberland Island, is in violation of a Federal law, in particular the Wilderness Act, 16 U.S.C. § 1133(c).

16. Issuing a permit to conduct commercial motorized vehicle tours through a potential Wilderness and Wilderness on Cumberland Island, will establish a precedent with respect to commercial, motorized activity within the boundaries of a Congressionally designated Wilderness and this will have significant environmental effects on the Cumberland Island Wilderness and potential Wilderness and possibly other Wildernesses throughout the National Wilderness Preservation System.

17. Under the NPS Supplemental Instructions for the implementation of the NEPA, categorical exclusions from NEPA are only permissible for those actions which would have “no significant effect on the quality of the human environment, and the action or group of actions would not involve unresolved conflicts concerning alternative uses of available resources.” 49 Fed. Reg. 21438 (May 21, 1984).

18. NPS’s decision to categorically exclude its federal action from NEPA review and to issue a permit to the Greyfield Inn to conduct commercial motorized vehicle tours through the Wilderness and potential Wilderness on Cumberland Island is highly controversial in nature and was issued without notice, without an opportunity for public comment, and without engaging in any environmental review process.

19. As alleged above, the issuance of a permit to the Greyfield Inn to conduct commercial motorized vehicle tours through and within the Wilderness and potential Wilderness on Cumberland Island cannot be categorically excluded from NEPA review.

20. NPS’s issuance of the NPS Permit, without notice, without public comment, and without first preparing an environmental review document considering the potential and cumulative impacts of these regular, motorized vehicle trips through Wilderness and potential Wilderness on Cumberland Island is in violation of NEPA and its implementing regulations, and is therefore contrary to law, is an abuse of discretion, and is arbitrary and capricious in violation of the APA. 5 U.S.C. § 706(2)(A).

COUNT III

Violation of the National Park Service Regulations and the APA, 5 U.S.C. § 706

21. Plaintiffs repeat and reallege the foregoing allegations.

22. NPS Regulations prohibit the issuance of a permit for an otherwise prohibited or restricted activity unless such permit is authorized by another regulation set forth in 36 C.F.R. Chapter I. Even when the issuance of a permit is possible, NPS regulations prohibit the issuance of a permit that is inconsistent with applicable legislation. 36 C.F.R. § 1.6(a).

23. NPS Regulations prohibit the issuance of a permit that would adversely impact the avoidance of conflict among visitor use activities. 36 C.F.R. § 1.6(a).

24. If a permit is inconsistent with applicable legislation or if it would adversely impact the avoidance of conflict among visitor use activities, NPS is obligated to deny the permit. 36 C.F.R. § 1.6(d).

25. NPS Regulations prohibit commercial vehicles on government roads within park areas when such use is in no way connected with the operation of the park. 36 C.F.R. § 5.6(b).

26. NPS may issue a permit for commercial vehicle use on a park road only when such use is necessary for access to private lands situated within or adjacent to the park area, to which access is otherwise not available. 36 C.F.R. § 5.6(c).

27. The Greyfield Inn's commercial motorized tours through the Cumberland Island Wilderness are purely motorized tours. They are not needed to access private lands within or adjacent to the Wilderness.

28. NPS's decision to issue a permit allowing the Greyfield Inn to conduct commercial motorized tours throughout the Wilderness and potential Wilderness on Cumberland Island is in violation of federal law, 16 U.S.C. § 1133.

29. NPS's decision to issue a permit allowing the Greyfield Inn to conduct commercial motorized tours throughout the Wilderness and potential Wilderness on Cumberland Island creates a conflict between those visitors seeking solitude and a primitive camping experience absent motorized vehicles and those individuals entering the Wilderness and potential Wilderness in motor vehicles.

30. The decision of the Park Service to issue a permit allowing for commercial motorized tours through the Wilderness and potential Wilderness on Cumberland Island is in violation of the Park Service's own regulations and is therefore contrary to law, is an abuse of discretion, and is arbitrary and capricious, in violation of the APA. 5 U.S.C. § 706(2)(A).

COUNTS RELATED TO THE NATIONAL PARK SERVICE TOURS

COUNT IV

Violation of the Wilderness Act, 16 U.S.C. § 1133, and the APA, 5 U.S.C. § 706

1. Plaintiffs repeat and reallege the foregoing allegations.
2. The NPS, the agency administering the Cumberland Island Wilderness and potential Wilderness, is responsible for "preserving the wilderness character of the area and shall administer such area for such other purposes for which it may have been established as also to preserve its wilderness character." 16 U.S.C. § 1133(b).
3. Under the Wilderness Act there is to be no motorized vehicle use within Wilderness except for emergencies and that which is necessary to meet the minimum requirements for the administration of the area for the purpose of protecting its Wilderness character. 16 U.S.C. § 1133(c).

4. Motorized van tours for the public through the Wilderness and potential Wilderness on Cumberland Island are not emergencies, nor are they required for the protection of the area as Wilderness, in accordance with the Wilderness Act, 16 U.S.C. § 1133(c).

5. By conducting motorized tours through the Wilderness and the potential Wilderness on Cumberland Island, the NPS has acted arbitrarily and capriciously and in violation of the Wilderness Act and in violation of the APA. 16 U.S.C. §§1133(b), 1133(c); 5 U.S.C. § 706(2)(A).

COUNT V

Violation of the National Environmental Policy Act, 42 U.S.C. § 4332, NEPA's Implementing Regulations, 40 C.F.R. §§ 1500-1508.28, NPS's Supplemental Instructions, 49 Fed. Reg. 21437, and the APA, 5 U.S.C. § 706

6. Plaintiffs repeat and reallege the foregoing allegations.

7. NEPA requires that federal agencies engage in environmental review of all agency actions. 42 U.S.C. § 4332(2)(A).

8. NEPA requires that federal agencies consider reasonable alternatives to actions that have the potential for significant environmental impacts or that are highly controversial in nature. 42 U.S.C. § 4332(2)(C), (E).

9. NEPA regulations require the preparation of environmental review documents—either an environmental assessment or an environmental impact statement—on all agency actions that have the potential to affect the environment at any level. 40 C.F.R. §§ 1501.3, 1051.4.

10. NPS's Supplemental Instructions regarding NEPA, 49 Fed. Reg. 21437, and the Council of Environmental Quality's regulations implementing NEPA, 40 C.F.R. §§ 1500-1508.28, require that the NPS prepare environmental review documents analyzing uses of Wilderness that may have an adverse impact on the environment, that threaten to violate a federal law, that establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects, or that are controversial.

11. NPS's Wilderness Management manual requires managers to comply with NEPA and to specifically consider wilderness characteristics and values including outstanding opportunities for the public to experience solitude and the ability for it to engage in a primitive and unconfined type of recreation free from man-made noise when considering the use of motorized equipment or mechanical transport. National Park Service, Management Policies 2001, Chapter 6, Wilderness Preservation and Management, § 6.3.4.3 (Dec. 2000).

12. Conducting motorized tours through Wilderness and potential Wilderness on Cumberland Island is in violation of a Federal law, in particular the Wilderness Act, 16 U.S.C. § 1133.

13. Conducting motorized tours through Wilderness and potential Wilderness on Cumberland Island will establish a precedent with respect to motorized activity within Congressionally designated Wilderness and this will have significant environmental effects on the Cumberland Island Wilderness and potential Wilderness and possibly other Wildernesses throughout the National Wilderness Preservation System.

14. NPS's decision to conduct motorized vehicle tours through the Wilderness and potential Wilderness on Cumberland Island is highly controversial in nature and was made without engaging in any meaningful environmental review process.

15. NPS's completion of two Minimum Requirements Determinations ("MRDs") does not satisfy NEPA requirements.

16. The Minimum Requirements Document ("MRD") is not a NEPA document. It is an internally prepared document that neither includes discussion of any scientific evidence, analysis of alternatives, or cumulative impacts, nor does it involve any public participation or comment.

17. NPS's decision to conduct motorized tours without notice, without public comment, and without first preparing an environmental review document, other than the MRDs, considering the potential and cumulative impacts of these regular, motorized vehicle trips through Wilderness and potential Wilderness is in violation of NEPA and its implementing regulations, and is therefore contrary to law, an abuse of discretion, arbitrary, and capricious in violation of the APA. 5 U.S.C. § 706(2)(A).

RELIEF REQUESTED

WHEREFORE, plaintiffs seek a judgment from this Court against defendant as follows:

1. A declaration that the Department of the Interior and the National Park Service violated the Wilderness Act, the National Environmental Policy Act and its implementing regulations, the National Park Service Regulations, and the Administrative Procedure Act by issuing a commercial permit to a private entity to conduct motorized commercial vehicle tours within Wilderness and potential Wilderness on Cumberland Island.

2. A declaration that the decision of the National Park Service and the Department of the Interior to conduct motorized tours within Wilderness and potential Wilderness on Cumberland Island was arbitrary, capricious, an abuse of discretion, and contrary to law, specifically the Wilderness Act, the National Environmental Policy Act, and the National Park Service's regulations.

3. An injunction vacating the permit issued January 17, 2002, to the Greyfield Inn authorizing it to conduct motorized vehicle tours within Wilderness and potential Wilderness on Cumberland Island.

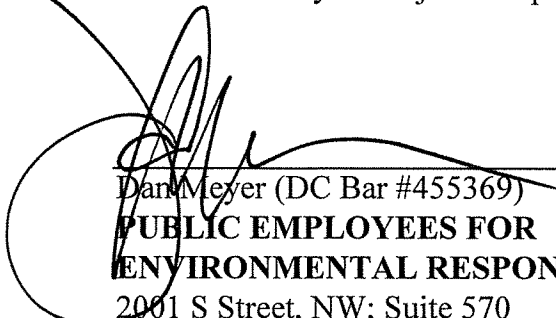
4. An injunction prohibiting NPS from conducting motor vehicle tours within Wilderness and potential Wilderness on Cumberland Island.

5. An injunction prohibiting NPS from conducting or authorizing motor vehicle tours within Wilderness and potential Wilderness on Cumberland Island pending completion of an Environmental Assessment and/or an Environmental Impact Statement in compliance with NEPA.

6. An order that the plaintiffs herein recover their costs, including reasonable attorneys' fees, incurred in connection with this action, as provided for under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable law.

7. Such other and further relief as the Court may deem just and proper.

Dated: February 11, 2002



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