

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NO.: 2:07-CV-45-BO

DEFENDERS OF WILDLIFE,
Plaintiff,

v.

NATIONAL PARK SERVICE, ET AL.
Defendants

April 4, 2008
Raleigh, North Carolina

and

DARE COUNTY, ET AL.
Intervenor/Defendants

MOTION HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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For the
Intervenor/Defendants:

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Proceedings recorded by stenomask, transcript produced from dictation.

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P R O C E E D I N G S

1:58 P.M.

THE COURT: GOOD AFTERNOON. THIS IS THE CASE OF DEFENDERS OF WILDLIFE VERSUS THE NATIONAL PARK SERVICE AND OTHERS.

AND WHILE I KNOW THAT THERE WAS A MOTION FILED A DAY AGO, A DAY AND A HALF AGO, BY THE DEFENDANTS AND THE PARK SERVICE TO CONTINUE THE HEARING, I FELT LIKE IT WAS ESSENTIAL THAT WE GO FORWARD AT THIS POINT AND AT LEAST UNDERTAKE AS MUCH AS MAY BE APPROPRIATE NOW.

I THINK IT'S ALSO IMPORTANT AND CRITICAL TO A CASE AND MATTERS IN FRONT OF THE FEDERAL COURT THAT THEY BE OPEN AND PUBLIC AND TRANSPARENT. AND SO THIS IS ANOTHER REASON WHY WE'RE GOING TO PROCEED WITH THE MATTERS BEFORE THE COURT.

I KNOW FROM THE MOTION TO CONTINUE THAT THERE'S SOME REPRESENTATION THAT AT LEAST THE PLAINTIFF AND THE PARK SERVICE PARTIES HAVE BEEN ENGAGED IN SOME DISCUSSION ABOUT A RESOLUTION OF THE CASE. AND CERTAINLY PARTIES ARE THE MASTERS OF THEIR CASE, NOT THE COURT. AND I DON'T HAVE ANY INTEREST OR RIGHT TO INTERFERE WITH THAT AND SO I'LL RESPECT THAT AS IT GOES FORWARD.

THE COURT HAS CERTAIN DUTIES, TOO, AND PENDING BEFORE THE COURT TODAY HAVING BEEN SET FOR SOME TIME IS THE PRELIMINARY INJUNCTION BY THE PLAINTIFFS.

AND BY WAY OF PREFACE, I'LL SAY THAT I HAVE READ THE BRIEFS AND I HAVE FOLLOWED THE EVIDENCE THAT HAS BEEN

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1 PROPOUNDED BY THE PLAINTIFFS, AND THE PLAINTIFFS HAVE A
2 COMPELLING CASE FOR PRELIMINARY INJUNCTIVE RELIEF.

3 THE COURT IS WELL AWARE, AS ARE THE LAWYERS, OF THE
4 LEGAL STANDARD THAT APPLIES FOR PRELIMINARY INJUNCTIVE RELIEF;
5 THE BALANCE OF HARMS, THE PUBLIC INTEREST, AND THE LIKELIHOOD
6 OF SUCCESS ON THE MERITS AND THE SPECIALIZED STANDARDS THAT
7 APPLY TO CASES IN WHICH THE ENDANGERED SPECIES ACT COMES TO
8 PLAY. AND SO THERE ARE TWO PARALLEL TRACKS OF EXAMINATION
9 THAT THE COURT HAS ENGAGED IN.

10 AND WHILE -- I'LL BE GLAD TO HEAR FROM THE PARTIES,
11 BUT WHILE IT APPEARS THAT YOU ARE ENTITLED TO PRELIMINARY
12 INJUNCTION, THE EXACT SCOPE AND EFFECT OF SUCH RELIEF IS
13 REALLY WHAT'S IMPORTANT. AND IT'S MY PERCEPTION WITHOUT
14 HAVING ANY SPECIAL INSIGHT FROM THE PARTIES THAT THAT'S WHAT
15 YOU'RE WORKING ON, THAT YOU'RE WORKING ON THE PRACTICAL
16 APPLICATION, STRIVING FOR A BALANCE BETWEEN THE INTEREST OF
17 NATURE AND THE INTEREST OF MAN IN THIS ARENA AND TRYING TO
18 STRIKE A POINT AT WHICH THE LAW IS FAITHFULLY OBSERVED AND THE
19 RIGHTS AND TRADITIONS OF THE PEOPLE WHO ARE ULTIMATELY THE LAW
20 ARE ALSO GIVEN RESPECT IN THIS.

21 AND SO I'LL BE GLAD TO HEAR FROM YOU. I'M PREPARED
22 TO MAKE A RULING ON THE INJUNCTION TODAY OR SHORTLY HEREAFTER.
23 CERTAINLY ANY RULING I MAKE WILL BE A WRITTEN ONE, BUT I'LL BE
24 GLAD TO HEAR FROM THE PLAINTIFFS AND WHAT THEIR POSITION IS
25 TODAY.

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1 MR. CARTER: YOUR HONOR, I'M DERB CARTER
2 REPRESENTING THE PLAINTIFFS, DEFENDERS OF WILDLIFE AND
3 NATIONAL AUDUBON SOCIETY. AND I WOULD BEGIN, I THINK, BY
4 ADDRESSING OUR MOTION FOR A CONTINUANCE THAT WE FILED WITH
5 RESPECT TO THE HEARING TODAY WHICH WAS SCHEDULED TO -- TO HEAR
6 THE MOTION FOR PRELIMINARY INJUNCTION.

7 WHEN WE RECEIVED OUR RESPONSE TO THAT FROM THE
8 FEDERAL DEFENDANTS ON MARCH 14TH, THEY RESPONDED IN A SOMEWHAT
9 UNEXPECTED MANNER TO US THAT WE -- ALTHOUGH WE THOUGHT WE HAD
10 A VERY GOOD CASE THAT, IN FACT, WE ARE LIKELY TO PREVAIL ON
11 THE MERITS OF THE CASE, AND THAT THE APPROPRIATE ISSUES NOW
12 ARE THE SCOPE OF THE -- ANY INJUNCTIVE RELIEF THAT THE COURT
13 MAY GRANT.

14 THE FEDERAL DEFENDANTS INDICATED AN INTEREST IN
15 PURSUING GOOD FAITH NEGOTIATIONS WITH THE PARTIES INVOLVED TO
16 SEE IF, IN FACT, WE COULD REACH SOME RESOLUTION THAT REFLECTS,
17 IN YOUR WORDS, THE MULTIPLE INTERESTS INVOLVED WITH THE
18 INTERESTS OF NATURE AND THE WILDLIFE THAT ARE OF GREAT
19 INTEREST TO MY CLIENTS AND THE INTEREST OF THE GOVERNMENT AND
20 THE INTEREST OF THE INTERVENORS.

21 WE HAVE WORKED VERY DILIGENTLY AND HAVE AN AGREEMENT
22 IN PRINCIPLE ON ALL POINTS OF A SETTLEMENT AND CONSENT DECREE
23 THAT WE ARE WORKING OUT THE VERY FINAL DETAILS ON AND DEALING
24 WITH AN APPROVAL PROCESS THAT WE DON'T HAVE TO DEAL WITH AS
25 PLAINTIFFS, BUT THE FEDERAL GOVERNMENT DOES HAVE TO DEAL WITH

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1 IT AS A GOVERNMENT ENTITY AND WOULD BE IN A POSITION, WE
 2 BELIEVE, TO FILE THIS CONSENT DECREE WITH THE COURT NEXT
 3 FRIDAY, WHICH IS THE SEVEN-DAY EXTENSION THAT WE'VE REQUESTED
 4 IN TERMS OF EXTENDING THE TIME FOR A HEARING ON THIS
 5 PRELIMINARY INJUNCTION MOTION.

6 THE COURT: WELL, I'M ASSUMING THAT ANY INTER-PARTY
 7 AGREEMENT THAT YOU ARRIVE AT WILL NOT RESULT IN A VOLUNTARY
 8 DISMISSAL AND THE TERMINATION OF THE CASE AND A HANDSHAKE
 9 BETWEEN THE PARTIES THAT THE COURT IS GOING TO BE REQUIRED TO
 10 OR REQUESTED TO ACCEPT AND CONFIRM AN AGREEMENT.

11 AND SO ONE OF THE REASONS FOR BEING HERE TODAY IS TO
 12 HOPEFULLY FLESH OUT IN SOME TERMS WHAT WOULD BE A RELEVANT
 13 CONSIDERATION IN AN AGREEMENT SO THAT YOU DON'T GO THROUGH THE
 14 PROCESS WITH FUTILITY AND COME IN WITH A PROPOSAL THAT'S
 15 INCONSISTENT WITH THE INTEREST OF JUSTICE NECESSARILY.

16 I KNOW THAT YOU'RE WORKING SINCERELY AND
 17 CONSCIENTIOUSLY ON ALL SIDES IN THE CASE, BUT PUBLIC DISCOURSE
 18 IS BETTER THAN, YOU KNOW, PRIVATE EXPECTATIONS. AND I THINK
 19 THAT'S SOMETHING THAT WE WILL GO FORWARD WITH TODAY. THANK
 20 YOU.

21 MR. CARTER: YES, YOUR HONOR.

22 THE COURT: I'LL HEAR FROM THE GOVERNMENT.

23 MS. TAYLOR: THANK YOU, YOUR HONOR. LORA TAYLOR
 24 WITH THE U.S. ATTORNEY'S OFFICE APPEARING ON BEHALF OF ALL
 25 FEDERAL DEFENDANTS.

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1 WE ECHO MR. CARTER'S STATEMENTS THAT AS WE NOTED IN
2 OUR RESPONSE WE RECOGNIZE THAT WE DO NOT HAVE AN OFF ROAD
3 VEHICLE REGULATION IN PLACE SO WE ARE NOT COMPLIANT WITH 36
4 CFR 4.10, AND THE PLAINTIFFS HAVE ESTABLISHED A LIKELIHOOD OF
5 SUCCESS ON THE MERITS WITH REGARD TO THAT ELEMENT OF THEIR
6 COMPLAINT.

7 SINCE WE FILED OUR RESPONSE WE HAVE BEEN DILIGENTLY
8 ATTEMPTING TO NEGOTIATE WITH BOTH PARTIES. A RESOLUTION BEGAN
9 WITH JUST THE SCOPE OF THE INJUNCTION AND THEN WITH THE
10 PLAINTIFFS IT CONTINUED ON TO RESOLUTION POSSIBLY OF ALL
11 MATTERS IN THE CASE.

12 AND WE DO BELIEVE THAT WE HAVE AN AGREEMENT IN
13 PRINCIPLE THAT WOULD PROTECT ALL SPECIES AND RESOLVE ALL
14 CLAIMS AND DISPUTES WHILE STILL PRESERVING THE APPROPRIATE
15 AMOUNT OF RECREATIONAL ACCESS. BECAUSE AS YOUR HONOR IS
16 AWARE, WE DO HAVE AN OBLIGATION TO PROVIDE REASONABLE ACCESS
17 THAT WOULD NOT HARM THE ENVIRONMENT. AND THAT IS WHAT WE
18 BELIEVE OUR AGREEMENT IN PRINCIPLE PROVIDES, FOR PRESERVATION
19 AND PROTECTION OF THE ENVIRONMENTAL NEST WHILE STILL ALLOWING
20 FOR THE APPROPRIATE AMOUNT OF ACCESS.

21 WE ARE PREPARED TO -- I HAVE TO SEND THIS UP THE
22 CHAIN OF COMMAND ON BOTH THE DEPARTMENT OF JUSTICE SIDE AND
23 DEPARTMENT OF INTERIOR SIDE. SO, IT MUST ULTIMATELY BE
24 APPROVED BY THE ASSISTANT ATTORNEY GENERAL FOR THE
25 ENVIRONMENTAL AND NATURAL RESOURCES DIVISION AS WELL AS THE

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1 DEPUTY ASSISTANT SECRETARY OF INTERIOR. BOTH OF THOSE
2 GENTLEMEN HAVE BEEN BRIEFED ON THE PROPOSAL AND WE HAVE BEGUN
3 THE PROCESSES OF -- WE HAVE BEGUN THE APPROVAL PROCESS.

4 WHAT WE ENVISION IS PRESENTING THE SETTLEMENT TO THE
5 COURT IN THE FORM OF A CONSENT DECREE. WE THINK WE WILL BE
6 PREPARED TO DO THAT BY NEXT FRIDAY AND THAT WOULD BE THE
7 PUBLIC FORUM AND THE OPPORTUNITY FOR ALL TO HEAR WHAT THE
8 SETTLEMENT IS AS WELL AS FOR THE INTERVENOR PARTIES, TO THE
9 EXTENT THAT THEY DO NOT AGREE WITH THE SETTLEMENT, TO ARGUE
10 THEIR OBJECTIONS.

11 SO, THERE WILL BE A FULL OPPORTUNITY TO BE HEARD.
12 WE BELIEVE THAT THAT IS THE APPROPRIATE RESPONSE HERE AND THAT
13 GOING ON WITH THE ARGUMENT RELATED TO THE PRELIMINARY
14 INJUNCTION IS UNNECESSARY BECAUSE WE -- IT WILL BE OBIATED BY
15 THE SETTLEMENT.

16 THE COURT: THANK YOU. LET ME ASK YOU SOME
17 QUESTIONS THAT BEAR -- SINCE YOU'RE REPRESENTING THE PARK
18 SERVICE AND YOU'RE THE NATIONAL SEASHORE AND YOU REPRESENT THE
19 SUBJECT OF THIS LAWSUIT. THERE ARE SOME PHYSICAL AND
20 GEOGRAPHIC CHARACTERISTICS THAT ARE SELF-EVIDENT IN THIS
21 PROCESS THAT MAY BE ADDRESSED AND MAY NOT BE AND THE COURT
22 WOULD CERTAINLY HAVE THOSE IN ITS MATRIX OF EXAMINATION OF THE
23 ISSUES.

24 FOR INSTANCE, THERE ARE THREE SEPARATE GEOGRAPHIC
25 AREAS. THERE'S BODIE ISLAND AND THERE IS HATTERAS ISLAND AND

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1 THERE'S OCRACOKE ISLAND THAT COMPRISE THE SEASHORE, THE
2 HATTERAS SEASHORE.

3 AND EXPERIENCES AND CHARACTER AND USE AND ACCESS TO
4 BODIE ISLAND ARE PROFOUNDLY DIFFERENT FROM -- AND I'M NOT
5 SAYING THIS AS A MATTER OF LAW, I'M SAYING THIS AS A MATTER OF
6 JUDICIAL NOTICE OF THE FACTS. MUCH OF THE AREA IN CONFLICT IN
7 BODIE ISLAND -- ON BODIE ISLAND INVOLVES THE FLATS OF OREGON
8 INLET ON THE NORTH AND EAST SIDE, IF YOU WANT TO CALL IT THAT,
9 OF THE CHANNEL ITSELF.

10 AND WE BEGIN THIS ENTIRE EXERCISE WITH THE
11 UNDERSTANDING THAT 36 YEARS AGO IN 1972, THERE WAS A
12 DECLARATION MADE AND THAT DECLARATION HAS COME FORWARD AS
13 BINDING AUTHORITY AND IT WAS IMPLEMENTED AT OTHER TIMES AND
14 OTHER PLACES ON SEASHORES THROUGHOUT THE ATLANTIC SEABOARD.
15 AND WHERE THE LAND WAS IN 1972 PHYSICALLY IS MATERIALLY
16 DIFFERENT FROM WHERE THE LAND IS TODAY. THE BRIDGE THAT WAS
17 BUILT, YOU TELL ME, ABOUT 1964 HAS FISHING ACCOMMODATION OVER
18 AREAS THAT WERE UNDERWATER THEN THAT ARE HUNDREDS OF YARDS IF
19 NOT FURTHER FROM ANY WATER NOW.

20 AND SO WHAT WOULD HAVE BEEN AVAILABLE TO DEAL WITH
21 IN 1972, IS DRASTICALLY DIFFERENT FROM WHAT'S AVAILABLE TO
22 DEAL WITH NOW. WHETHER THAT MATTERS I DON'T KNOW, BUT THAT'S
23 A FACT.

24 AND VOLUME OF ACCESS TO THE FLATS AT OREGON INLET IS
25 MUCH MORE ACUTE THAN IT IS TO THE OTHER AREAS. THE

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1 SENSATIONAL DISCUSSIONS OF A THOUSAND CARS ON A BIG HOLIDAY
2 WEEKEND OR A SIGNIFICANTLY HIGHER NUMBER OF CARS THAN A
3 THOUSAND, THAT OCCURS THERE. THAT'S THE MAGNET THAT DRAWS
4 THAT IN. THAT'S THE AREA THAT IS MOST INUNDATED WITH
5 MECHANICAL TRAFFIC.

6 GO OVER TO HATTERAS ISLAND, THE BEGINNING OF IT IS A
7 REFUGE ONCE YOU GET SOUTH OR WEST OF THE BRIDGE. AND THAT
8 GOES ON FOR HOWEVER MANY -- TEN MILES OR SO. AND THEN YOU
9 BEGIN TO HAVE STRETCHES OF SEASHORE INTERRUPTED BY VILLAGES.
10 AND THE VILLAGES ARE FIVE OR SIX, HOWEVER MANY THERE ARE, FROM
11 AVON, RODANTHE AND SALVO AND WAVES DOWN TO FRISCO AND
12 HATTERAS. TO MY KNOWLEDGE, AND I STAND TO BE CORRECTED, THOSE
13 ARE UNINCORPORATED POLITICAL SUBDIVISIONS. DOES THE
14 GOVERNMENT KNOW?

15 MS. TAYLOR: I'M NOT AWARE, YOUR HONOR.

16 THE COURT: AREN'T THEY UNINCORPORATED?

17 MR. LIEBESMAN: THAT'S MY UNDERSTANDING, YOUR HONOR.

18 THE COURT: YEAH, THEY'RE UNINCORPORATED
19 SUBDIVISIONS. AND SO THE GOVERNMENT OF THOSE IS DARE COUNTY.

20 ANYWAY, SO THE EXPERIENCE ON HATTERAS ISLAND AND
21 ACCESS AND USE IS DIFFERENT IN KIND FROM THE EXPERIENCE ON
22 BODIE ISLAND. AND THEN YOU GET OVER TO OCRACOKE AND YOU CAN'T
23 GET THERE WITHOUT TAKING A STATE FERRY OR SWIM OR TAKE A BOAT,
24 BUT IF YOU TOOK A BOAT, YOU CAN'T DRIVE.

25 SO, THE EXPERIENCE ON OCRACOKE IS RADICALLY

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1 DIFFERENT IF FOR NO OTHER REASON THAN PHYSICALLY ORV'S CAN'T
2 GET THERE. YOU ONLY HAVE HOWEVER MANY CAN GET THERE BY TAKING
3 THE FERRY AND COMING BACK AND FORTH. AND SO THE TREATMENT
4 THERE MAY BE THE SAME, IT MAY BE DIFFERENT.

5 AND I DON'T KNOW WHAT YOUR NEGOTIATIONS ENTAIL, BUT
6 THESE ARE ALL SORT OF COMMON SENSE PUBLIC INTEREST FACTORS.

7 AND HOW YOU MAY RESPOND TO THE FLATS AT OREGON INLET
8 MAY BE RADICALLY DIFFERENT FROM HOW YOU'D RESPOND TO OCRACOKE.
9 AND I UNDERSTAND THAT THE CRITICAL FACTOR THAT'S INVOLVED HERE
10 FROM A LEGAL STANDPOINT IS THE PROTECTION OF THE WILDLIFE,
11 EITHER THE THREATENED OR ENDANGERED SPECIES OR OTHER WILDLIFE
12 WHETHER TERRESTRIAL OR AIRBORNE THAT ARE WITHIN THE MISSION
13 STATEMENT AND PUBLIC PURPOSE OF THE SEASHORE.

14 ANOTHER PHYSICAL CHARACTERISTIC OF THE SEASHORE AND
15 OFF ROAD VEHICLE ACCESS IS THAT THE ONLY WAY LEGALLY YOU CAN
16 GET ONTO THE SEASHORE IS TO GO UP A RAMP. YOU CAN'T DRIVE
17 OVER THE DUNE. YOU CAN'T JUST WILLY-NILLY BE TRAVELING SOUTH
18 AND DECIDE I FEEL LIKE DRIVING ON THE BEACH. YOU HAVE TO GO
19 TO A RAMP. AND ON BODIE ISLAND I BELIEVE UNDER THE -- DURING
20 THE PERIODS OF TIME THAT ARE RELEVANT TO THIS, I COULD BE
21 WRONG, THERE'S ONLY ONE RAMP AND THAT'S NEAR THE -- NEAR
22 OREGON INLET.

23 ONCE YOU GET ONTO HATTERAS ISLAND THERE ARE SEVERAL
24 RAMPS. ONCE YOU GET FURTHER DOWN TO OCRACOKE THERE ARE RAMPS
25 AGAIN, NOT TOO MANY. BUT THE ABILITY TO REGULATE THE NUMBER

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1 AND KIND AND CIRCUMSTANCES OF OFF ROAD VEHICLES IS READILY
2 AVAILABLE THROUGH THE PORTAL THAT EXISTS NOW, IT'S JUST NOT
3 MANNED AND IT NEVER HAS BEEN. IT'S NOT EXAMINED OR USED AS A
4 GATEKEEPER, BUT PHYSICALLY THAT APPLIES.

5 NOW, TO MY KNOWLEDGE, AND CORRECT ME IF I'M WRONG
6 BECAUSE IT'S YOUR PLAN, YOU HAVE AN INTERIM PLAN THAT CAME
7 INTO EFFECT LESS THAN A YEAR AGO. AND THAT PLAN DOES NOT
8 DISCRIMINATE OR LIMIT THE NUMBER OF VEHICLES, THE CHARACTER OF
9 THE DRIVER IN TERMS OF PRE-CLEARANCE, OR THE TYPE OF VEHICLE,
10 DOES IT? AS LONG AS IT'S A LICENSED MOTOR VEHICLE THAT CAN
11 OTHERWISE ENGAGE IN OFF ROAD OPERATION IT CAN GO ON THE BEACH.

12 MS. TAYLOR: THAT'S MY UNDERSTANDING, YOUR HONOR.

13 THE COURT: OKAY. SO, IF YOU TAKE A -- TAKE A
14 GUESS, 8,000 POUND HUMMER AND PUT THAT OUT THERE, THAT'S
15 ENTITLED TO THE SAME ACCESS AND DIGNITY AS A 3,000 POUND SMALL
16 JEEP?

17 MS. TAYLOR: THAT WOULD BE MY UNDERSTANDING, YOUR
18 HONOR.

19 THE COURT: OKAY. I MEAN, THESE ARE THINGS THAT I
20 DON'T KNOW IF YOU'RE DEALING WITH THEM OR NOT. BUT IF YOU'RE
21 NOT, COMMON SENSE WOULD RECOMMEND THAT YOU DEAL WITH THEM
22 BECAUSE YOU DON'T HAVE TO BE A MARINE BIOLOGIST TO FIGURE OUT
23 THAT THE IMPACT OF A HIGH WEIGHT, HIGH ENGAGEMENT VEHICLE IS
24 GOING TO BE SIGNIFICANT COMPARED TO SOME OTHER KIND OF
25 VEHICLE. THE IMPACT OF 1,000 OR 1,500 VEHICLES IS GOING TO BE

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1 A LOT DIFFERENT THAN THE IMPACT OF 150 OR 200 VEHICLES.

2 CAN YOU DRIVE 24 HOURS A DAY ON THE BEACH? IS THERE
3 A NIGHTTIME RESTRICTION?

4 MS. TAYLOR: NOT CURRENTLY, YOUR HONOR.

5 THE COURT: OKAY. AND OTHER THAN CLOSURES, IS THERE
6 A TIME OF YEAR RESTRICTION ON HATTERAS ISLAND?

7 MS. TAYLOR: CURRENTLY, YOUR HONOR, I BELIEVE IN
8 FRONT OF THE VILLAGES DURING --

9 THE COURT: WELL, IN FRONT OF THE VILLAGES IS --
10 OTHER THAN THE MEAN HIGH WATER LINE DOWN THAT'S -- THE
11 VILLAGES REGULATE THAT, DON'T THEY?

12 MS. TAYLOR: AND THOSE AREAS ARE CLOSED TO OFF ROAD
13 VEHICLE USE IN FRONT OF VILLAGES.

14 THE COURT: DURING THE SUMMER.

15 MS. TAYLOR: DURING THE SUMMER. AND WE DO ACTUALLY
16 CURRENTLY UNDER OUR INTERIM STRATEGY WE HAVE PRE-NESTING
17 CLOSURES IN PLACE WHERE OFF ROAD VEHICLES ARE ALSO RESTRICTED
18 AND THOSE WERE -- THOSE ARE PUT INTO EFFECT UNDER THE INTERIM
19 STRATEGY TO PROTECT BREEDING AREAS PARTICULARLY FOR PIPING
20 PLOVER.

21 THE COURT: RIGHT. THE BREEDING AREAS TALK ABOUT
22 NESTING AND MATING AND I GUESS THOSE ARE THE PRINCIPLE THINGS.
23 BUT I HAVEN'T SEEN ANYTHING IN THE DISCUSSION, AND MAYBE IT'S
24 NON-SCIENCE OR BAD SCIENCE, ABOUT THE EDGE OF THE WATER
25 EFFECT. BUT I'LL BE SURPRISED TO LEARN THAT A CRITICAL

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