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December 30, 2022

Superintendent Gary Ingram
Cumberland Island National Seashore
101 Wheeler Street
St. Marys, GA 31558

Re: Cumberland Island National Seashore
Visitor Use Management Plan/Environmental Assessment

Dear Superintendent Ingram:

Center for a Sustainable Coast provides these comments on the *Cumberland Island National Seashore Visitor Use Management Plan and Environmental Assessment* (November 2022) ("VUMP & EA").

Visitor Capacity

In the *Cumberland Island National Seashore Foundation Document*, the National Park Service ("NPS") recognized that the opportunity for visitors "to experience outdoor recreation in an uncrowded, undeveloped setting" was "important enough to merit" establishing the Cumberland Island National Seashore.¹

The *Foundation Document* – which is "the core" planning tool for each unit in the national park system² – identified the "uncrowded setting" and "outstanding opportunities for solitude" as resources "deemed essential" to achieving

¹ *Cumberland Island National Seashore Foundation Document* (2014) at p. 7.

² <https://parkplanning.nps.gov/foundationDocuments.cfm>



*Advocating responsible decisions that sustain
coastal Georgia's environment & quality of life*

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Cumberland Island National Seashore's purpose.³ It also instructed that "low visitation helps maintain these qualities."⁴

The *Foundation Document* found that the uncrowded setting was "stable because of [the] approximate 300 person per day capacity" but that this uncrowded setting was threatened by demand for increased visitor access and increased private boat visits.⁵

Visitor carrying capacities for each unit in the national park system must be identified in a general management plan.⁶ The *Cumberland Island National Seashore General Management Plan* determined that limiting access to "approximately 300 visitors per day" would "provide for a continuation of the existing natural character of the island, free from ... intensive visitor use."⁷ The *General Management Plan* also specified that visitor monitoring data will determine whether to adjust this visitation level.⁸

The *VUMP & EA* states that NPS relied on three studies to identify the proposed visitor capacity (*Cumberland Island National Seashore Visitor Use Study; Understanding Visitor Use at Cumberland Island National Seashore; and Evaluation of the Relationship Between Current Conditions, Travel*

³ *Foundation Document* at pp. 8-9.

⁴ *Foundation Document* at p. 9.

⁵ *Foundation Document* at p. 30.

⁶ 54 U.S.C. § 100502 (3).

⁷ *General Management Plan* at p. 1.

⁸ *General Management Plan* at p. 48.



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Patterns, Visitor Thresholds, and Ferry Services at Cumberland Island National Seashore).⁹ But these studies don't justify increasing ferry visitors to 700 per day and don't justify increasing access by private boats.

The *Cumberland Island National Seashore Visitor Use Study* found that "the current visitor use level" produces "high quality visitor experiences and opportunities to experience solitude"¹⁰ and reported that the 300-visitor per day limit was "very acceptable" to day visitors and wilderness users.¹¹

"If the management objective is to increase access," the *Visitor Use Study* suggested that visitor numbers "could be increased *somewhat* without the experience being perceived ... as either unacceptable or in need of management attention."¹² The authors cautioned, however, that "any increases in

⁹ *Cumberland Island National Seashore Visitor Use Management Plan and Environmental Assessment FAQs* (December 7, 2022) at p. 6 citing Hallo, Manning, Brownlee, and Smith, *2012 Cumberland Island National Seashore Visitor Use Study 2010–2011*; Peterson, Brownlee, and Sharp, *2016 Understanding Visitor Use at Cumberland Island National Seashore*; and Brownlee, Sharp, Blacketer, Nettles, and Perry, *2019 Evaluation of the Relationship Between Current Conditions, Travel Patterns, Visitor Thresholds, and Ferry Services at Cumberland Island National Seashore*.

¹⁰ Hallo, Manning, Brownlee, and Smith, *Cumberland Island National Seashore Visitor Use Study 2010–2011* at p. 44.

¹¹ Hallo, Manning, Brownlee, and Smith, *Cumberland Island National Seashore Visitor Use Study 2010–2011* at p. 1.

¹² Hallo, Manning, Brownlee, and Smith, *Cumberland Island National Seashore Visitor Use Study 2010–2011* at p. 44 (emphasis added).



*Advocating responsible decisions that sustain
coastal Georgia's environment & quality of life*

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visitation would need to be implemented incrementally”¹³ and found that exceeding 400 visitors per day would be “unacceptable” to day visitors and wilderness users.¹⁴

This *Visitor Use Study* provides no rational basis for the NPS proposal to increase ferry capacity to 700 daily visitors while also increasing access for private boats.

Similarly, *Understanding Visitor Use at Cumberland Island National Seashore* may assist in understanding visitor travel patterns – but it doesn’t include data or findings to justify 700 daily visitors on the ferry or increasing the number of visitors arriving by private boat.

Evaluation of the Relationship Between Current Conditions, Travel Patterns, Visitor Thresholds, and Ferry Services at Cumberland Island National Seashore refutes the proposed increase for visitor capacity. For example, NPS proposes that 92 people at one time should be the visitor limit for Dungeness Ruins.¹⁵ But visitors reported that 23 or more people at one time would be “unacceptable” and that they would not return if 31 people were present at one time.¹⁶

¹³ Hallo, Manning, Brownlee, and Smith, *Cumberland Island National Seashore Visitor Use Study 2010–2011* at p. 44.

¹⁴ Hallo, Manning, Brownlee, and Smith, *Cumberland Island National Seashore Visitor Use Study 2010–2011* at p. 1.

¹⁵ *VUMP & EA*, Table 6 at p. 25

¹⁶ *Evaluation of the Relationship Between Current Conditions, Travel Patterns, Visitor Thresholds, and Ferry Services at Cumberland Island National Seashore* at p. vii.



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The three studies NPS relied on don't show that visitor capacity can be increased as proposed while continuing to provide the "uncrowded setting" and "outstanding opportunities for solitude" the agency "deemed essential" to achieving Cumberland Island National Seashore's purpose.¹⁷

The ferry's capacity and schedule are the primary means for enforcing the *General Management Plan's* daily limit of "approximately 300 visitors per day."¹⁸ But the *General Management Plan's* visitor carrying capacity includes all visitors to Cumberland Island National Seashore – not just those arriving by ferry.¹⁹

Even if the *General Management Plan's* daily limit could be increased up to 400 (exceeding 400 is "unacceptable" to day visitors and wilderness users)²⁰ the NPS must collect monitoring data on the number of visitors arriving by private boat before increasing the ferry's capacity or schedule.

The "significant increase in the number of visitors arriving by private vessel and landing on the island"²¹ – combined with the proposed expansion of the St. Marys Gateway Dock and the proposed boatyard, docking facilities, and mixed-use development of the Wharf at St. Marys²² – mean that ferry

¹⁷ *Foundation Document* at pp. 8-9.

¹⁸ *Cumberland Island's Carrying Capacity*, Hans Neuhauser, at pp. 6-7.

¹⁹ *General Management Plan* at p. ii.

²⁰ Hallo, Manning, Brownlee, and Smith, *Cumberland Island National Seashore Visitor Use Study 2010-2011* at p. 1.

²¹ VUMP & EA at p. 103.

²² VUMP & EA at p. 203.



*Advocating responsible decisions that sustain
coastal Georgia's environment & quality of life*

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capacity may need to be decreased or limits on private boats may need to be imposed to preserve Cumberland Island National Seashore's uncrowded setting.

The *General Management Plan* specifies that monitoring data will provide the basis for adjusting the visitation level.²³ But NPS proposes to more than double the ferry capacity and to increase access for private boats without even knowing the existing visitation levels. Instead, the agency offers that "it can be safely said that current management is for an island-wide capacity of some undefined number greater than 300."²⁴

Zoning

The *VUMP & EA* includes proposed zoning revisions but doesn't accurately identify the existing zoning classification for parcels 02-103 (82.44 acres), 02-106 (78.93 acres), and 02-107 (78.93 acres). These undeveloped parcels span the island from marshlands to beach and are between Greyfield Inn and Sea Camp.

The *1994 Land Protection Plan Update* identified these parcels within the natural environment subzone:

"The natural and scenic setting of these three tracts is compatible with the natural resources and visitor management on this barrier island. The ... natural environment subzone ... is a natural environment that surrounds the development zones and is to be managed to allow activities that are based on and protective of the natural environment.... Residential or

²³ *General Management Plan* at p. 48.

²⁴ *VUMP & EA* at p. 98.



*Advocating responsible decisions that sustain
coastal Georgia's environment & quality of life*

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commercial development would detract from the existing primitive condition of these tracts by damaging resources and would be incompatible with the Section 6b enabling legislation and General Management Plan. Development, such as roads, structures and land clearings, plus vehicular use would be in conflict with the intent of the enabling legislation, which is to maintain a pristine land appearance."²⁵

The *VUMP & EA* proposes to rezone these parcels as private interest zone but doesn't include a map or text to identify the existing zoning as within the natural environment subzone. Nor does the *VUMP & EA* refer to the *1994 Land Protection Plan Update* in which the NPS concluded that structures on these parcels would be "incompatible" with the enabling legislation.

Table 2 (Changes to Zoning) in the *VUMP & EA* doesn't distinguish these parcels from other parcels in the "Greyfield Area" that are currently zoned as development zone or historic zone. (*VUMP & EA* at pp. 16-17).

The rationale for rezoning the Greyfield Area to private interest zone is stated as "Updated to depict current use and ownership." But the use of parcels 02-103, 02-106, and 02-107 hasn't changed since the *Land Protection Plan Update* except for a large dock on parcel 02-103 that was constructed with NPS consent in violation of the seashore's enabling legislation. Nor has the enabling legislation changed to authorize NPS action incompatible with permanently preserving the seashore in its primitive state. The only exceptions are for public recreation and concession tours.

²⁵ *Land Protection Plan* at p. 28



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coastal Georgia's environment & quality of life*

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To the extent a parcel's ownership affects the right to rezoning – as stated in the *VUMP & EA* rationale at Table 2 – the changed ownership for parcel 02-103 should disfavor rezoning because the parcel was purchased on speculation twenty-five years after Congress directed that Cumberland Island National Seashore “shall be permanently preserved in its primitive state.”

Of this nation's ten national seashores, only Cape Hatteras National Seashore has enabling legislation as protective as Cumberland Island National Seashore. (See, 16 U.S.C. §§ 459(a) – 459(j)).

The limited liability company that purchased Parcel 02-103 has a pending request to subdivide the parcel into ten lots with five homes on the marsh side and five homes on the beach side. As NPS determined in 1994, this use is incompatible with the enabling legislation. It's also contrary to the *Foundation Document*.

NEPA, Endangered Species Act, Enabling Legislation, and Wilderness

The *VUMP & EA* doesn't adequately explain why visitor capacity needs to be increased or why NPS considered only the preferred alternative and no-action alternative.²⁶ If the data disclosed in the *VUMP & EA* justifies any increase for visitor capacity, the limit must be lower than the preferred alternative (i.e., increasing capacity from 300 to no more than 400 daily visitors).

²⁶ 40 C.F.R. § 1501.5(c)(2).



*Advocating responsible decisions that sustain
coastal Georgia's environment & quality of life*

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NEPA requires federal agencies to take a “hard look” at all reasonably foreseeable impacts when preparing an Environmental Assessment.²⁷ The *VUMP & EA* failed to take a hard look at reasonably foreseeable impacts to protected species because the documentation lacked high quality population data for protected species, including manatees, loggerhead turtles, and piping plover.

Potential impacts to these species threaten to violate the Endangered Species Act, warranting further review in an Environmental Impact Statement or further disclosure after consultation with Fish & Wildlife Service and National Marine Fisheries Service – but before NPS approves any increased visitor capacity or rezoning.

The assessment of impacts to listed species in the *VUMP & EA*, including the Biological Evaluation at Appendix G, failed to adequately assess how increasing visitor access, increasing boat traffic, and rezoning undeveloped parcels may impact these species or their habitat.

The increased visitor capacity and rezoning would violate the Cumberland Island National Seashore enabling legislation, which states that except for areas deemed especially adaptable for public recreation, the “seashore shall be permanently preserved in its primitive state” and further states that except for tours of the seashore by a concessioner, “no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions now prevailing.”

²⁷ 42 U.S.C. § 4332(C)(2); 40 C.F.R. §§ 1501.2, 1508.1.



*Advocating responsible decisions that sustain
coastal Georgia's environment & quality of life*

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Even if the increased visitor capacity doesn't violate the Endangered Species Act, the boat landing zone proposed for the south end of the island is incompatible with preserving the seashore's unique fauna because it will increase boat traffic in an area used by manatees.

The *VUMP & EA* also failed to assess the reasonably foreseeable risk of fire caused by e-bike batteries. If e-bikes are allowed within Cumberland Island National Seashore, they should be limited in number, should not travel north of Plum Orchard, should not travel in wilderness or potential wilderness, and should stay off the beach during turtle nesting season.

"To the extent it can legally do so, the National Park Service is expected to manage the potential wilderness areas as wilderness, according to the provisions of the Wilderness Act of 1964."²⁸ Visitors should therefore be informed of where potential wilderness is located – especially if e-bikes are allowed on the island. The *VUMP & EA* included nine maps showing wilderness, but the updated zoning map was the only map to also identify potential wilderness.²⁹

Conclusion

The NPS should provide more clarity regarding which planning documents have been finalized and which have been updated or superseded. For example, the *VUMP & EA* refers to the *1984 General Management Plan* for existing zoning even

²⁸ *High Point, LLLP v. Nat'l Park Serv.*, 850 F.3d 1185, 1199–200 (11th Cir. 2017).

²⁹ *VUMP & EA*, Figure 4 at p. 19.



Advocating responsible decisions that sustain coastal Georgia's environment & quality of life

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though that plan was updated by the *1994 Land Protection Plan Update*.

The NPS must also comply with approved plans and the enabling legislation's directive to permanently preserve the seashore in its primitive state. Exceptions to a statute must be narrowly construed.

When drafting new plans or implementing existing plans, the NPS should be guided by the enabling legislation and the *Foundation Document's* findings that an "uncrowded setting" and "outstanding opportunities for solitude" are resources "deemed essential" to achieving Cumberland Island National Seashore's purpose.

Past actions by the NPS – including its letter of no objection to a dock for residential development adjacent to Sea Camp – were undertaken without complying with these documents and legislation. And now the agency proposes actions that overlook the *Foundation Document's* core components. The agency hasn't made any convincing argument for why visitor limits should be increased or why the parcels identified above should be rezoned. Even if NPS could show that visitor capacity should be increased, the reports cited in the *VUMP & EA* don't support increasing the limit to 700 visitors per day. To the contrary, those reports support leaving visitor limits at the existing level or maybe increasing the limit from 300 to 400 visitors per day. But before increasing the ferry capacity, NPS must collect data regarding the number of visitors who don't arrive by ferry.

/s/ David Kyler

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