

APPENDIX B: REQUEST FOR A FEDERAL CONSISTENCY
DETERMINATION

Federal Express

Mr. Stephen Rynas
Federal Consistency Coordinator
NC Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557-3421

Re: PRA-CAHA 10(2) NC 12 Improvements
Federal Consistency Review

Dear Mr. Rynas:

The Federal Highway Administration (FHWA), in cooperation with the National Park Service (NPS), respectfully requests a Federal Consistency Determination for the proposed roadway improvements to NC 12 at Cape Hatteras National Seashore. The improvements include resurfacing of the existing pavement, replacement of four existing culverts, and widening of the existing two-foot shoulders to create five-foot wide shoulders; from Whalebone Junction south for 5.28 miles. The existing transportation facility has deteriorated and poses a potential safety hazard to motorists.

In accordance with Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972, as amended, the FHWA, in cooperation with the NPS, has determined that the proposed action is consistent to the maximum extent practicable with the enforceable policies of North Carolina's approved coastal management program. This determination is based on the review of the proposed project's conformance with the enforceable policies of the State's coastal program found in Chapter 7 of Title 15A of the North Carolina Administrative Code.

A review of the Dare County Land Use Plan discloses that the proposed activity is in conformance with Policy Nos. 8 and 14. Improvements to NC 12 are consistent with the objectives of the National Park Service's Management Policies (2006) and Cape Hatteras National Seashore's General Management Plan / Development Concept Plan / Environmental Assessment (1984). Additional information is provided in the attached Environmental Assessment. The enclosed draft Environmental Assessment for the proposed improvements to NC 12 was prepared in accordance with the National Environmental Policy Act of 1969, as amended, and it is anticipated that the project will receive a Finding of No Significant Impact.

We respectfully request that the Division of Coastal Management concur with this consistency determination. Enclosed for your review you will find the supporting narrative, the draft Environmental Assessment, and the project plans. If you have any questions, or require any additional information, please contact Ms. Lisa Landers, at Lisa.Landers@dot.gov or (571) 434-1592.

Sincerely,

Kevin S. Rose
Environmental Compliance
Specialist

Enclosures

cc:

Ms. Meghan Carfioli, Natural Resource Manager, National Park Service, Outer Banks Group, Manteo, NC

Mr. Gregory Robinson, Public Health Service Specialist, National Park Service, Outer Banks Group, Manteo, NC

Mr. Kent Cochran, Southeast Region FLHP Coordinator, National Park Service, Atlanta, GA

Mr. Michael Murray, Superintendent, National Park Service, Outer Banks Group, Manteo, NC (hardcopy)

FHWA:LLanders:0571:5/8/09:am:C:\Documents and Settings\llanders\My Documents\CAHA Working Draft 8 6 09 Appendix.doc

cc: Official Copy, Chrono, P&P Reading, HD (Patel and Johnson)

Distribution:

Meghan Carfili – Margaret_Carfioli@nps.gov

Gregory Robinson – Gregory_Robinson@nps.gov

Kent Cochran – Kent_Cochran@nps.gov

Michael Murray – 1401 National Park Drive, Manteo, NC 27954

**NC 12 Improvements
Federal Consistency Determination
Cape Hatteras National Seashore
Dare County, North Carolina**

Project Description

The Federal Highway Administration, in cooperation with the National Park Service seeks a concurrence with the determination that the proposed project is consistent to the maximum extent practicable with the enforceable policies of North Carolina's approved coastal management program.

The existing pavement of NC 12 has degraded. This degradation is evident from the visible fatigue cracking, rutting, settling, and potholes, particularly in the southbound lane. The Whalebone Junction parking area and vehicle pullouts are also experiencing similar pavement degradation, such as cracking (USDOT 2009). The Whalebone Junction Information Station serves as a visitor contact station, and welcomes visitors to the Cape Hatteras National Seashore (hereafter referred to as "the Seashore" or "the Park"). Vehicle pullouts are located along NC 12, and serve as trailheads to the hunting blind trails and access to a wildlife viewing scenic overlook. Gravel has previously been placed at the pullouts beyond the paved area to offer additional parking area for motorists and reduce the rutting of the surrounding vegetated areas. Motorists continue to park on the vegetated areas, rather than the paved and graveled surfaces. To better inform the public of parking availability and reduce impacts to surrounding vegetated areas, pull-off areas need to be better delineated.

In addition to the pavement degradation, there are also four corrugated metal pipe culverts in three locations (one location has two culverts side by side) that have also degraded. These culverts are rusted, and holes through the culvert are visible. One of these culverts is also shorter than the vegetated roadway shoulders and requires plastic delineators to warn motorists and park employees mowing the vegetated areas.

NC 12 is a two-lane roadway with 11-foot paved lanes and 2-foot paved shoulders. The posted speed limit is 55 mph. Bicyclists currently use the roadway, and travel in the 2-foot shoulders alongside vehicles traveling at high speeds. The close proximity of cyclists causes a potential for conflicts with vehicles. Expanded paved roadway shoulders are available along other portions of NC 12 both north and south of the project area. South Old Oregon Inlet Road (also known as SR 1243 and Beach Road), running parallel to NC 12 through the Nags Head residential area, has a paved side multi-use path with numerous intersection and driveway crossings. This paved side path presently better serves children and basic bicyclists but is not considered ideal for experienced riders due to the frequent driveway crossings, many of which have limited sight distance. The NCDOT Division 1 has constructed and plans to construct widened paved shoulders, four feet total on each side of the roadway, to accommodate bicycle use. The widened shoulders are planned to extend for 42 continuous miles, with the exception of this 5.28 mile segment, which is not under the jurisdiction of NCDOT.

The proposed project would include resurfacing of the existing deteriorated roadway pavement. Several options regarding the resurfacing of NC 12 are under consideration, and would be refined during final design of the proposed action. Resurfacing would most likely include milling of the existing pavement and recycling this material into a new asphalt wearing surface and/or overlaying asphalt over the existing roadway surface. The resurfacing strategy chosen would be based on factors such as cost, life-expectancy, and durability.

The paved shoulders would be expanded. At the edge of the existing pavement the vegetation and soils would be removed to create an area to place approximately five inches of aggregate base. The five-foot-wide shoulders would be in accordance with the Guide for the Development of Bicycle Facilities, published by the American Association of State Highway and Transportation Officials, which recommends that paved shoulders be at least four feet wide to accommodate bicycle travel.

Five parking areas located along the project area would also be milled and/or paved. The Whalebone Information Station parking area would be repaved within the existing pavement limits. A small gravel and grass section within the parking area would be paved. Four existing paved pull-offs along the road would be repaved to match their existing dimensions. Three of the pull-offs include an additional gravel area extending beyond the paved area. The gravel was placed due to vehicles parking in the grass beyond the paved pull-off. In order to discourage vehicles from parking beyond the paved area, the gravel will be removed, and bollards would be placed adjacent to the pullout. Gravel will be left in place where needed to create a trail to the wildlife overlook and hunting blind trails.

Wooden bollards would be replaced where necessary, and regulatory and warning signs would be replaced to ensure that there is adequate retroreflectivity. Retroreflectivity is the reflection of light, typically in the form of vehicle headlights, at night-time.

Along NC 12, three culvert locations contain culverts that have deteriorated and are beyond their useful life. These locations are at approximately mile 1.86, 2.67, and 3.13 (measuring south from Whalebone Junction – mile 0.0). At mile 1.86 there are two culverts placed parallel to each other. Both of these culverts would be replaced with the same size and length culverts. Mile 2.67 has a single culvert. This culvert would be replaced with the same size and length culvert. The culvert at mile 3.13 is currently too short. The ends of the culvert are within the vegetated shoulder and recovery zone, and are indicated as a potential hazard to motorists with plastic delineators. This culvert would be replaced with the same diameter culvert, however it would be longer. In order to replace the culverts, an area surround the culverts would be contained and the water would be pumped out.

Coordination with the NC Department of Environment and Natural Resources would continue through the finalization of the project design to determine whether permanent BMPs are necessary to treat stormwater created from the widened shoulders.

Coordination to date has indicated that vegetated swales would work best in a linear transportation system to improve infiltration of stormwater. Infiltration allows the pollutants in stormwater to be filtered. The 5.28 mile-corridor was analyzed to determine where placement of stormwater features is feasible. The measured available roadside recovery (clear zone) width of NC 12 varies between 15 and 20 feet along the 5.28-mile length of roadway. First, the mowed, maintained vegetated shoulder and side slope area was analyzed to determine where the swales would fit without impacting wetlands. A vegetated swale would require approximately 12 feet from the edge of pavement. Then, the roadway was analyzed to determine the super-elevation. Super elevation is the tilting of the roadway to offset centripetal forces developed as a vehicle goes around a curve. A flat roadway section will have a crown, where the center of the roadway is higher. The crown makes rainfall drain to both edges of the road. A super elevation makes rainfall drain to only one side of the road. The analysis of the super elevation was done to ensure that if required to treat stormwater, the swales would only be placed on sides of the road collecting rainfall drainage.

Traffic Control during Construction

Portions of NC 12 would be closed to traffic in order to resurface the roadway and replace the culverts. During lane closures, one lane of traffic would be closed, and traffic in the north and south bound directions would alternate use of the open traffic lane. Signs and flaggers would be in place to direct traffic.

Staging

Staging would take place in previously disturbed, paved areas. Locations that may be used for staging include the paved area which previously served as an access road and parking for the U.S. Coast Guard Station, or the Bodie Island Maintenance Facility, located just south of the southern end of South Old Oregon Inlet Road. Construction vehicles would be parking at the staging location when not in use, and materials such as aggregate and topsoil would be stockpiled there.

Construction Timing and Duration

Construction would most likely take place in the spring or fall. Asphalt plants are in operation from March 15th through December 15th. Construction would also be timed to avoid the peak visitor season for the Seashore during the summer months. It is estimated that Alternative B would be constructed in 14 weeks.

NEPA Compliance

An Environmental Assessment for the proposed project has been prepared in accordance with the National Environmental Policy Act of 1969, as amended; regulations of the Council on Environmental Quality (40 CFR 1508.9); and NPS Director's Order #12: Conservation Planning, Environmental Impact Analysis, and Decision-Making. This EA also complies with Section 106 of the National Historic Preservation Act of 1966, as

amended. The EA presents alternatives for the proposed roadway improvements, and analyzes the potential impacts that these alternatives would have on the natural, cultural, and human environment.

The EA will soon be published on the NPS's website, Planning, Environment and Public Comment (<http://parkplanning.nps.gov/caha>) for a 30-day public review and comment period.

This application is submitted to ensure conformity with 15 CFR Park 930 which fully maintains the authority and ability of North Carolina to review proposed federal actions that would have a "reasonably foreseeable effect" on any land or water use or natural resource of North Carolina's coastal zone, as provided for and in the CZMA and NOAA's regulations, as revised in 2000, "to the maximum extent practicable". The FHWA and NPS believe that the proposed project is fully in conformity and fully consistent to the maximum extent practicable with the standards and management objectives of North Carolina's State Guidelines for: Areas of Environment Concerns, 15A NCAC 07H.0101, et seq.; The Estuarine and Ocean Systems, 15A NCAV 07H 0201, et seq.; and Natural and Cultural Resource Areas, 15A NCAC 07H.5301, et seq.

Design Alternatives

Alternatives to the proposed improvements to NC 12 include the no action alternative, and an alternative that would improve the existing roadway without widening the shoulders.

Public Access to the Coasts

Public access is specifically identified as one of the key priorities of the CZMA. The proposed improvements to NC 12 would have no impact on the Congressionally declared national policy to provide public access to coastal areas for recreational purposes.

Dare County Land Use Plan

Dare County's Land Use Plan Policy No. 8 supports the preservation and protection of the public's right to access and use of the public trust areas and waters. The County's Policy No. 14 supports shoreline access. The improvement of NC 12 directly furthers these policies.

Areas of Environmental Concern

The proposed project is in compliance with the Coastal Management Act and is consistent with the Coastal Management Program of North Carolina.

Pursuant to 15A NCAC 07H .0205, management objectives have been established for conservation of coastal wetlands for the purpose of preserving and perpetuating their biological, social, economic and aesthetic values. To fulfill these objectives, uses with

are not water dependent are not allowed in coastal wetlands pursuant to 15A NCAC 07H .0208(a)(1). Coastal wetlands were identified and mapped during a site visit with a CAMA representative. No coastal wetlands will be impacted by the proposed project. Based on the above information, the proposed project is consistent with the management objectives of 15A NCAC 07H .0205.

Pursuant to 15A NCAC 07H .0206, management objectives have been established for conservation of estuarine waters for the purpose of preserving and perpetuating their biological, social, economic and aesthetic values. To fulfill these objectives uses which are not water dependent are not allowed in estuarine waters pursuant to 15A NCAC 07H .0208(a)(1). To reduce potential effects to coastal wetlands due to pollution from stormwater leaving the proposed project site, swales or other Best Management Practices may be constructed to accommodate runoff from the increased impervious surface. Based on the above information the proposed project is consistent with the management objectives of 15A NCAC 07H .0206.

Pursuant to 15A 07H .0209, management objectives have been established to ensure that shoreline development is compatible with the dynamic nature of the shoreline, and North Carolina's objectives for conserving and managing the important natural features of the estuarine and ocean systems. Construction is approximately 0.14 miles from the nearest shoreline at the closes point along NC 12, and there are no Outstanding Resource Waters in the area. Furthermore, based on analysis contained elsewhere in this document, this project will not alter coastal wetlands, cause degradation of submerged aquatic vegetation or shellfish beds, or cause irreversible damage to documented historic resources. Based on the above information, the proposed project is consistent with the management objectives of 15A NCAC 07H .0209.

Pursuant to 15A NCAC 07H .0303, management objectives have been established to ensure that development in ocean hazard areas is compatible with the goals of eliminating unreasonable danger to life while achieving a balance between the financial, safety, and social factors involved in development of these areas. Ocean hazard areas include ocean erodible areas, where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation; high hazard flood areas; inlet hazard areas; and unvegetated beach areas. The proposed project is not located within any ocean hazard areas as defined at 15A NCAC 07 .0303.

Pursuant to 15A NCAC 07H .0505, management objectives have been established to both protect habitats necessary for survival of threatened and endangered plants and animals, and minimize land use impacts that might jeopardize these habitats. In accordance with the May 14, 2009 email from the U.S. Fish and Wildlife Service, the proposed project will have no effect on federally threatened or endangered species. Based on the USFWS determination, the proposed project is consistent with the management objectives of 15A NCAC 07H .0505.

Pursuant to 15 NCAC 07H .0506, management objectives have been established to protect the features of designated coastal complex natural areas for the purpose of

safeguarding these areas' biological relationships, and educational, scientific, and aesthetic values. In accordance with May 14, 2009, the proposed project site does not contain any federally listed endangered or threatened species, their formally designated critical habitat, or species currently proposed for listing under the Endangered Species Act. Based on the USFWS determination, the proposed project is consistent with the management objectives 15A NCAC 07H .0506.

Pursuant to 15A NCAC 07 .0507, management objectives have been established to protect unique coastal geologic formations for the purpose of preserving the formation's physical components that serve as important scientific and educational sites, or as valuable scenic resources. Presently, the only designated unique coastal geologic formation is Jockey's Ridge (15A NCAC 07H .0507[c][3]). Jockey's Ridge is located within the Town of Nags Head approximately four miles from the proposed project site. Therefore, the proposed project will have no effect to this unique coastal geologic formation and is consistent with the management objectives of 15A NCAC 07H .0507.

Pursuant to 15A NCAC 07H .0509, management objectives have been established to conserve significant coastal archeological resources for the purpose of preserving their value as scientific, educational, and aesthetic resources. In accordance with the April 24, 2009 email from the State Historic Preservation Office there are no historic resources that would be affected by the proposed project. Therefore, the proposed project is consistent with the management objectives of 15A NCAC 07H .0509.

Pursuant to 15A NCAC 07H .0510, management objectives have been established to conserve significant coastal architectural resources for the purpose of preserving their value as scientific, educational, and aesthetic resources. In accordance with the April 24, 2009 email from the State Historic Preservation Office there are no historic resources that would be affected by the proposed project. Therefore, the proposed project is consistent with the management objectives of 15A NCAC 07H .0510.

Pursuant to 15A NCAC 07H .0600, management objectives have been established for all AEC's for the purpose of preventing pollution of shellfish waters, maintaining aircraft safety, and preventing noise pollution resulting from airspace activity. The proposed activity will not effect any of these resources; therefore the proposed project is consistent with the management

North Carolina Coastal Program Policies

Pursuant to 15A NCAC 07M.0300, management objectives have been established to ensure public access to public beaches and waters. The improvements to NC 12 would not alter the availability of authorized, existing public beach access routes.

Pursuant to 15A NCAC 07M.0800, management objectives have been established for waters of the State within the coastal area that have a potential for uses which require optimal water quality. The proposed action would not degrade or deteriorate the water quality of the Pamlico Sound or Atlantic Ocean.

Required State, Federal, and Local Permits

Permits are anticipated to be required from the U.S. Army Corps of Engineers (Clean Water Act Section 404 Permit – Nationwide), North Carolina Division of Water Quality (National Pollutant Discharge Elimination System, Clean Water Act Section 401 Water Quality Certification, CAMA Major Permit, and Coastal Stormwater Permit), and North Carolina Division of Land Resources (Erosion and Sediment Control Certificate of Approval).