

# Appendix F: Draft Section 106 Programmatic Agreement

The draft version of the programmatic agreement to resolve adverse effects from the project on historic resources has been, and continues to be, coordinated and developed in consultation with the NC State Historic Preservation Officer, the Advisory Council on Historic Preservation, and consulting parties. The Programmatic Agreement will be finalized prior to the Record of Decision.

**PROGRAMMATIC AGREEMENT  
AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,  
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER  
AND  
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
FOR  
THE REPLACEMENT OF HERBERT C. BONNER BRIDGE (BRIDGE NO. 11)  
ON NC 12 OVER THE OREGON INLET  
DARE COUNTY, NORTH CAROLINA  
TIP PROJECT B-2500  
FEDERAL AID PROJECT BRS-2358(15)**

**WHEREAS**, the Herbert C. Bonner Bridge (Bridge No.11, Dare County), built over Oregon Inlet in 1962, is approaching the end of its reasonable service life and as part of NC 12 provides the only highway connection between Hatteras Island and Bodie Island; and

**WHEREAS**, NC 12 has been and continues to be subjected to washouts and disruptions due to storms and other natural events that are a part of the dynamic and ever-changing environment along North Carolina's Outer Banks; and

**WHEREAS**, the Federal Highway Administration (FHWA), in cooperation with the North Carolina Department of Transportation (NCDOT), has determined that replacement of Bonner Bridge is necessary and intends to proceed with construction of a parallel bridge across Oregon Inlet as soon as possible; and

**WHEREAS**, the replacement consists of a parallel structure on the west side of the existing Bonner Bridge in the immediate vicinity of Oregon Inlet, hereinafter defined as the Undertaking/Phase I and described in Attachment A, which has been accepted by the Interagency NEPA/Section 404 Merger Team of which the consulting parties to this Programmatic Agreement (PA) are members, or are represented by the members; and

**WHEREAS**, to address the unpredictability of natural events which could impact NC 12 in the future, the NCDOT and FHWA will develop in consultation with the Interagency NEPA/Section 404 Merger Team, the NC 12 Transportation Management Plan (TMP). The NC 12 TMP will be a phased-decision making process that responds to and plans for the dynamic and changing environment in which the Undertaking/Phase I and future steps to maintain NC 12 as a viable transportation corridor are thoroughly considered; and

**WHEREAS**, this PA shall be incorporated into the NC 12 TMP; and

**WHEREAS**, the Undertaking/Phase I anticipates retention of the terminal groin and revetment on Hatteras Island, which requires the issuance of a new permit from the U.S.

Fish and Wildlife Service (USFWS) under the authority of the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee); and pursuant to 50 CFR 29.21; and

**WHEREAS**, this PA does not pertain to any future road and/or bridge construction south of the Parallel Bridge Corridor undertaken by FHWA and/or NCDOT, nor does it abrogate the USFWS's rights, responsibilities, and obligations to manage Pea Island National Wildlife Refuge pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) and other relevant authorities; and

**WHEREAS**, NCDOT and FHWA have endorsed the application for NC 12 to become a National Scenic Byway as established under the Intermodal Surface Transportation Efficiency Act of 1991, and reauthorized in 1998 under the Transportation Equity Act for the 21st Century; and

**WHEREAS**, identification of historic properties within the Undertaking/Phase I's Area of Potential Effects has been carried out in accordance with the Advisory Council on Historic Preservation's (ACHP) regulations (36 CFR Part 800) for implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

**WHEREAS**, the Undertaking/Phase I will affect the National Register of Historic Places (NRHP)-listed (former) Oregon Inlet US Coast Guard Station and the Pea Island National Wildlife Refuge, a property determined or eligible for inclusion in the NRHP; and

**WHEREAS**, NCDOT has agreed to design modifications that keep subsequent phases of the project out of the limits of the Rodanthe Historic District (NRHP-eligible), which also includes the Chicamacomico Life Saving Station (NRHP-listed), but it is also understood that dramatic changes may require reassessment, under the NC 12 TMP, for that phase; and

**WHEREAS**, FHWA has prepared the FEIS and additional documentation that have identified phases of the Undertaking/Phase I and effects on historic properties and submitted a notice of adverse effect to ACHP, which elected to participate in this consultation; and

**WHEREAS**, the FHWA has consulted with the North Carolina State Historic Preservation Officer (SHPO) and the ACHP to develop this PA pursuant to Section 14(b)(3) of 36 CFR Part 800; and

**WHEREAS**, NCDOT has participated in the consultation and been invited as a signatory to this PA; and

**WHEREAS**, the National Park Service (NPS), the USFWS, County of Dare, the Chicamacomico Historical Association (CHA), and the North Carolina Aquariums (Aquariums) have participated in the consultation and been invited to concur in this PA;

**NOW, THEREFORE,** FHWA, the ACHP, the SHPO, and the NCDOT agree that the Undertaking/Phase I and subsequent phases covered by the NC 12 TMP shall be administered in accordance with the following principles and stipulations to satisfy FHWA's Section 106 responsibilities for these actions.

## **PRINCIPLES**

FHWA and NCDOT shall adhere to the following principles for replacement of the Bonner Bridge and development and implementation of the NC 12 TMP:

1. FHWA and NCDOT commit to plan, design, and implement the Undertaking/Phase I in accordance with the best practices and measures available at the time to avoid and minimize impacts to historic properties.
2. FHWA and NCDOT will seek, discuss, and consider the views of the consulting parties to this PA concerning design and construction options throughout the planning for any subsequent phases.
3. Given the potential for changes in the environment and historic properties, FHWA and NCDOT will, for any subsequent phases, identify and evaluate any properties that are or may be eligible for listing in the NRHP.
4. FHWA and NCDOT will take into account direct, indirect, and cumulative effects on historic properties pursuant to 36 CFR 800.5(a)(1) and will consider measures to improve existing conditions affecting historic properties.
5. As a matter of public policy and in accordance with FHWA guidance at the time, reasonableness of cost shall be considered when selecting measures to avoid, minimize, or mitigate adverse effects to historic properties. Cost should not be the only determining factor in mitigation decisions.
6. FHWA and NCDOT will minimize impacts associated with the Management of NC 12 on the natural habitat and the NRHP-eligible historic landscape of the Pea Island National Wildlife Refuge.
7. FHWA has an Emergency Relief Program that establishes protocols for coordination with NCDOT and other Federal and state agencies to deal with emergencies. FHWA and NCDOT will comply with 23 CFR 668 and 36 CFR 800.12, and other applicable environmental laws, when a disaster and/or emergency is declared by the appropriate authority.

## **STIPULATIONS**

FHWA will ensure that the following measures are carried out:

### **I. Parallel Bridge Corridor Minimization/Mitigation Measures**

In order to facilitate planning and streamline development of plans for the Undertaking/Phase I, NCDOT shall, in consultation with the consulting parties,

develop the following historic contexts to aid in historic planning for the parallel bridge corridor and possible heritage tourism initiatives.

A. Ethnographical Context

- 1) NCDOT will work with the USFWS, SHPO, and NPS to compile an ethnographical context of the men and women that lived and worked in the general project area during the late nineteenth and early twentieth centuries. The context will focus on the area's watermen, fishermen, Civilian Conservation Corps, members of gun or hunting clubs, and life saving station employees. NCDOT will be responsible for the following tasks.
  - a. Gathering oral histories from surviving members of these groups or families.
  - b. Conducting primary and secondary research regarding the activities of these groups.
  - c. Compiling documentary materials and digitizing images.
- 2) NCDOT will produce a digital document which contains the recorded oral histories and documentary materials. NCDOT shall afford the USFWS, SHPO, and NPS an opportunity to review and comment on the draft digital document. If no comments are received from the USFWS, SHPO, and NPS within thirty (30) days of confirmed receipt, NCDOT can assume that the reviewing parties do not object to the document. Should any of these parties have questions about or comments on such plans and specifications, NCDOT shall consult with that party, and if necessary with several or all consulting parties to address such questions and comments. NCDOT shall deposit copies of the documentation with USFWS, NPS, SHPO, and the Historic Architecture Group of NCDOT within three (3) years of the letting of the Phase I contract.

B. Context for Tourism

- 1) NCDOT will work with the USFWS, SHPO, Aquariums, CHA, and NPS to compile a context for the Coast Guard and Life Saving stations, wildlife refuges, and other state and federal "outposts" on North Carolina's Outer Banks.
- 2) NCDOT will produce a digital document which synthesizes the histories and documentary materials associated with the various sites.
- 3) In addition, NCDOT will prepare the artwork and text for a brochure that could be used by travelers and residents as a guidebook to locate and understand the significance of the various sites and their place in history of the Outer Banks and the state.
- 4) NCDOT shall afford the USFWS, SHPO, Aquariums, CHA, and NPS an opportunity to review and comment on the draft brochure. If no comments are received from the USFWS, SHPO, Aquariums, CHA, and NPS within thirty (30) days of confirmed receipt, NCDOT can

assume that the reviewing parties do not object to the brochure. Should any of these parties have questions about or comments on such plans and specifications, NCDOT shall consult with that party, and if necessary with several or all consulting parties to address such questions and comments.

- 5) NCDOT shall deposit copies of the documentation and brochure artwork and text with USFWS, SHPO, Aquariums, CHA, and NPS within three (3) years of the letting of the Phase I contract and will provide 50,000 brochures to tourism organizations such as Historic Albemarle, Coastal Guide, NC Northeast Commission, Outer Banks Visitors Bureau, and state visitor centers.

## **II. Pea Island National Wildlife Refuge**

### **A. Bridge Design**

Currently, the bridge rail is proposed as a 32-inch concrete parapet with 2-bar, metal rail atop the parapet. Prior to completion of the final design for the Undertaking/Phase I bridge structure within the Pea Island National Wildlife Refuge, NCDOT shall afford the SHPO, USFWS, and NPS an opportunity to review and comment on the plans and specifications for the parapet and bridge rail for NC 12. If no comments are received from the SHPO, USFWS, or NPS within thirty (30) days of confirmed receipt, NCDOT can assume that the reviewing parties do not object to the proposed design. Should any of these parties have questions about or comments on such plans and specifications, NCDOT shall consult with that party, and if necessary with several or all consulting parties to address such questions and comments.

### **B. Management of NC 12**

NCDOT, in consultation with FWHA, USFWS, NPS, SHPO, and the North Carolina Coastal Geological Cooperative, will develop and implement sustainable techniques to protect NC 12 and subsequently ameliorate the adverse impacts to the Refuge and Pea Island.

### **C. Copies of Technical Reports**

NCDOT will provide the USFWS and NPS with copies of the cultural resource technical reports previously produced by NCDOT to describe the historic architecture, historic landscape, terrestrial archaeology, and underwater archaeology investigations in the Undertaking/Phase I's Area of Potential Effects. NCDOT will deliver this information to USFWS and NPS within six (6) months of signing the PA.

### **D. Signs**

NCDOT will provide and install signs within the Refuge, at locations coordinated with the USFWS and NPS, to direct people to the visitor's center and points of historical interest, including prominent Civilian Conservation Corps installations, within three (3) years of the letting of the Phase I contract.

#### E. Exhibits and Kiosks

- 1) NCDOT will provide the USFWS and NPS with information about the historic significance and structural importance of Civilian Conservation Corps' work efforts in the Refuge for use in exhibits and kiosks that will be made available to visitors.
- 2) NCDOT will design and produce a custom kiosk at a location specified by the USFWS within three (3) years of the letting of the Phase I contract. The kiosk, like the signs mentioned in Stipulation C above, will be installed or built in a manner consistent with USFWS or the Refuge's Visitor Service Facility Standards. More specifically, NCDOT will research and design the interpretive panels; design the structure, provide funding for fabrication of the kiosk, and install the kiosk at the site. Prior to fabrication of the interpretive panels and kiosk structure NCDOT shall afford the SHPO, ACHP, and USFWS an opportunity to review and comment on the panels and structure. If no comments are received from the SHPO, ACHP, or USFWS within 30 days of confirmed receipt, NCDOT can assume that the reviewing parties do not object to the proposed design. Should any of these parties have questions about or comments on such plans and specifications, NCDOT shall consult with that party, and if necessary with several or all consulting parties to address such questions and comments.
- 3) Once installed by NCDOT, it is the intention of USFWS to maintain the kiosks subject to the availability of appropriated funds.

### **III. (former) Oregon Inlet US Coast Guard Station**

#### A. Parking Lot and Access Road

- 1) NCDOT will make improvements (clearing sand and paving) to the access road (SR 1257) and parking area, if NCDOT needs these areas for staging. If and when the (former) Oregon Inlet Coast Guard Station becomes a viable facility and is open to the public, NCDOT will maintain SR 1257 to the standards of the North Carolina Secondary Road System.
- 2) For the purposes of this PA, staging areas are defined as (1) the storage of equipment or materials that are needed for the construction/demolition of the bridge over the Oregon Inlet and (2) the placement of temporary offices or trailers.
- 3) NCDOT shall insure access to the (former) Oregon Inlet Coast Guard Station during construction of the Undertaking (Phase I).

#### B. Signs

NCDOT will provide and install roadside signs to direct visitors to the station from Northbound NC 12 and Southbound NC 12 within one (1) month of the replacement bridge over Oregon Inlet being open to traffic.

### C. Exhibits and Kiosks

NCDOT will provide Aquariums with information about the historic significance and structural importance of the Station for use in exhibits and kiosks, which will be made available to visitors. NCDOT will design and produce a custom kiosk at a location specified by Aquariums within three (3) years of the letting of Phase 1 of the project.

- 1) More specifically, NCDOT will research and design the interpretive panels; design the structure, provide funding for fabrication of the kiosk, and install the kiosk at the site.
- 2) Prior to fabrication of the interpretive panels and kiosk structure NCDOT shall afford the SHPO, ACHP, and Aquariums an opportunity to review and comment on the panels and structure. If no comments are received from the SHPO, ACHP, or Aquariums within thirty (30) days of confirmed receipt, NCDOT can assume that the reviewing parties do not object to the proposed design. Should any of these parties have questions about or comments on such plans and specifications, NCDOT shall consult with that party, and if necessary with several or all consulting parties to address such questions and comments.
- 3) Once installed by NCDOT, Aquariums will maintain the kiosks.

### **IV. Context Sensitive Solutions**

FHWA and NCDOT commit to utilizing the best practices and measures available at the time during the construction the Parallel Bridge and when implementing activities associated with Pea Island/NC 12 Transportation Management Plan to avoid and minimize all impacts to historic properties.

### **V. Unanticipated Discovery**

If additional historic properties are discovered or unanticipated effects on historic properties are found after FHWA approves the Undertaking/Phase I and construction has commenced, FHWA will consult with the SHPO, the property owner, and any Indian tribe that may ascribe traditional cultural and religious significance to the properties in accordance with 36 CFR 800.13(b). If Native American human remains are discovered, NCDOT and FHWA will contact the federal land managing agency so that it may comply with Native American Graves Protection and Repatriation Act (NAGPRA). Inadvertent or accidental discovery of human remains will be handled in accordance with North Carolina General Statutes 65 and 70.

### **VI. Dispute Resolution**

Should any of the Signatory or Concurring Party(ies) object within (30) days to any plans or documentation provided for review pursuant to this PA, the FHWA shall consult with the objecting party(ies) to resolve the objection. If the FHWA

or objecting party(ies) determines that the objection cannot be resolved, the FHWA will forward all documentation relevant to the dispute to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will either:

- Provide the FHWA with recommendations which the FHWA will take into account in reaching a final decision regarding the dispute, or
- Notify the FHWA that it will comment pursuant to 36 CFR Section 800.7(c) and proceed to comment.
- Any ACHP comment provided in response to such a request will be taken into account by the FHWA, in accordance with 36 CFR Section 800.7 (c) (4) with reference to the subject of the dispute.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. FHWA's responsibility to carry out all of the actions under this PA that are not the subject of the dispute will remain unchanged.

## **VII. Amendments**

Should any of the Signatory parties believe that any of the terms of this PA cannot be carried out or that an amendment to the terms must be made, that party(ies) shall immediately consult with the other party(ies) to develop an amendment. The amendment will be effective on the date a copy is signed by all of the original signatories. If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the agreement in accordance with Stipulation VIII, below. Environmental conditions will be monitored for any changes prior to permitting of subsequent phases and the NC 12 TMP may provide for any amendments that may result from environmental changes and need for permits at those times.

## **VIII. Termination**

Any Signatory may terminate this PA by providing notice to the other party(ies), provided that the party(ies) will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this PA will require compliance with 36 CFR 800. This PA may be terminated by the execution of a subsequent PA that explicitly terminates or supersedes its terms.

If the USFWS does not renew the existing permit for the terminal groin, FHWA shall notify the parties to this PA that the Undertaking will not proceed as planned and that this PA is null and void. In the event that FHWA and NCDOT are unable to proceed with the Undertaking/Phase I as currently proposed, FHWA

shall reinitiate Section 106 consultation in accordance with 36 CFR Part 800 regarding other alternatives for the replacement of the Herbert C. Bonner Bridge.

**IX. Duration**

Unless terminated pursuant to Stipulation VIII above, this PA will be in effect until FHWA, in consultation with the other Signatory and Concurring Party(ies), determines that all of its terms have satisfactorily been fulfilled, which ever time comes first, or if NCDOT is unable or decides not to construct the Undertaking/Phase I.

Execution of this PA by FHWA, ACHP, and SHPO, and implementation of its terms, evidence that FHWA has afforded the Council an opportunity to comment on the Undertaking/Phase I, and that FHWA has taken into account the effects of the Undertaking/Phase I on the historic properties.

**SIGNATORIES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Sullivan  
Federal Highway Administration, North Carolina

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Crow  
North Carolina State Historic Preservation Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Fowler  
Advisory Council on Historic Preservation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Gibson  
North Carolina Department of Transportation

**CONCURRING PARTIES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
xxx  
Dare County, North Carolina Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
xxx  
North Carolina Aquariums, (Former) Pea Island US Coast Guard Station

By: \_\_\_\_\_ Date: \_\_\_\_\_  
xxxx  
USFWS, Regional Director, Southeast Region

By: \_\_\_\_\_ Date: \_\_\_\_\_  
xxxx  
National Park Service

By: \_\_\_\_\_ Date: \_\_\_\_\_  
xxxx  
Chicamacomico Historical Association

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### **Parallel Bridge Corridor with NC 12 Transportation Management Plan Alternative**

The revised Preferred Alternative, the Parallel Bridge Corridor with NC 12 Transportation Management Plan, proposes to proceed with the construction of Phase I of the Parallel Bridge Corridor as soon as possible. Phase I of the Parallel Bridge Corridor consists of a parallel replacement structure on the west side of the existing Bonner Bridge in the immediate vicinity of Oregon Inlet. Several alternative conceptual designs for Phase I will be evaluated in an Environmental Assessment/Section 4(f) Evaluation. Following a Record of Decision, the exact alignment and pier placement for Phase I would be determined during the final design engineering process.

Specifically, the southern bridge approach and its connection to the existing road for Phase I within the Pea Island National Wildlife Refuge would be determined in coordination with the U.S. Fish and Wildlife Service so as to minimize adverse impacts to refuge resources. The northern bridge approach and its connection to the existing road for Phase I on Bodie Island would be determined in coordination with the National Park Service so as to minimize adverse impacts to Seashore resources. The bridge structure itself would be designed in coordination with the U. S. Army Corps of Engineers and the U. S. Coast Guard so as to maximize the available navigation span and thereby minimize future dredging required within Oregon Inlet. All aspects of Phase I would be designed to conform to North Carolina highway specifications as approved by FHWA so as to ensure the safe construction and operation of the highway facility. In addition, all environmental regulatory and resource agencies would have an opportunity to review and comment on the final design prior to the authorization of construction.

The Parallel Bridge Corridor with NC 12 Transportation Management Plan Alternative does not include any action at this time on Hatteras Island beyond the limits of Phase I. The study and selection of future actions on Hatteras Island beyond the limits of Phase I would be undertaken as outlined in a Partnership Agreement between the cooperating agencies, including the State Historic Preservation Office. The Partnership Agreement will address transportation management through 2060 with a plan to monitor conditions on NC 12 and the affected environment, and modify management actions so as to minimize the adverse impacts to the Refuge resources while maintaining NC 12 as a viable transportation facility. Future construction actions within the project corridor would be evaluated in cooperation with the appropriate environmental regulatory and resource agencies in a process stipulated in the Partnership Agreement. The Partnership Agreement will incorporate by reference all relevant planning legislation, including the National Environmental Policy Act, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, etc. In addition, the Partnership Agreement shall reference the Section 106 Programmatic Agreement among the Federal Highway Administration, Advisory Council on Historic Preservation, the North Carolina State Historic Preservation Officer and North Carolina Department of Transportation for

the Replacement of the Herbert C. Bonner Bridge dated dd/mm/yy within the “Mutual Agreements” section.

The new Preferred Alternative, the Parallel Bridge Corridor with NC 12 Transportation Management Plan, is consistent with the Section 404/NEPA Merger Process agreement for this project that was approved in August 2007. The Signatory and Concurring parties to the Partnership Agreement shall include those members of the Section 404/NEPA Merger Process team who wish to participate.

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