

# Appendix H: Draft Partnership Agreement

At the May 2009 Merger Meeting (Appendix D), the Merger team agreed on a need for some type of “memorandum of understanding or agreement” to document how project decisions will be made for future phases of the project.

The draft Partnership Agreement contained in this appendix represents the version discussed at the September 17, 2009 Merger Team meeting (Appendix D). Rather than solely relying on this one mechanism to address future decision-making, the Merger Team felt it would be better to limit the Partnership Agreement to (possibly) those agencies proposing the action (e.g. FHWA & NCDOT) and those land-managing agencies (e.g. NPS and USFWS). In addition to the Partnership Agreement, the Merger Team agreed to sign an amended Concurrence Point #3 form (CP#3 is the identification of the Least Environmentally Damaging Practicable Alternative). The Merger Team anticipates signing this concurrence form in October 2009.

FHWA and NCDOT will continue to work with the land managing agencies on the draft Partnership Agreement to produce an agreement that will allow the project to proceed in a manner that meets the requirements of all parties.

**PARTNERSHIP AGREEMENT  
AMONG  
THE FEDERAL HIGHWAY ADMINISTRATION,  
UNITED STATES FISH AND WILDLIFE SERVICE,  
UNITED STATES NATIONAL PARK SERVICE  
UNITED STATES ARMY CORPS OF ENGINEERS,  
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL  
RESOURCES,  
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 Federal Highway Administration (“FHWA”), North Carolina Division; the U.S. Fish and Wildlife Service (“USFWS”); the National Park Service (NPS) the North Carolina Department of Transportation (“NCDOT”); the U.S. Army Corps of Engineers (“USACE”); and the North Carolina Department of Environment and Natural Resources (“NCDENR”) (collectively “the parties”), have determined that replacement of Bonner Bridge is necessary to

- Provide a new means of access from Bodie Island to Hatteras Island for its residents, businesses, services, and tourists prior to the end of Bonner Bridge’s service life.
- Provide a replacement crossing that takes into account natural channel migration expected through year 2050 and provides the flexibility to let the channel move.
- Provide a replacement crossing that will not be endangered by shoreline movement through year 2050;

and

**WHEREAS**,

This Partnership Agreement (PA) sets forth the cooperative policies and procedures that will guide the parties to manage the NC 12 highway corridor within the Pea Island National Wildlife Refuge (“the Refuge”) through the year 2050. The parties agree to work cooperatively as outlined in this PA to maintain a safe public road across the refuge in a manner that avoids, minimizes, and/or mitigates all adverse impacts to the refuge; and

**WHEREAS**, A Final Environmental Impact Statement (FEIS) and Environmental Assessment (EA) have identified the preferred alternative -- the Parallel Bridge/NC 12

Transportation Management Plan -- and its impact on the human and natural environment; and

**WHEREAS**, NCDOT and FHWA propose to proceed with the construction of Phase I of the Parallel Bridge/NC 12 Transportation Management Plan alternative as soon as possible. Phase I of the Parallel Bridge/NC 12 Transportation Management Plan alternative consists of a parallel replacement bridge structure on the west side of the existing Bonner Bridge in the immediate vicinity of Oregon Inlet. The Parallel Bridge/NC 12 Transportation Management Plan includes a phased-decision making process developed to address the dynamic and changing environment across the length of the study area corridor through the year 2050 for which the undertakings are planned; and

**WHEREAS**, the parties have worked together to develop this PA; and

**WHEREAS**, the Environmental Protection Agency (EPA), NOAA-Fisheries Service, and the State Historic Preservation Office (SHPO) have participated in the development of this PA and have been invited to concur in it; and

**WHEREAS**, concurrence in this PA indicates that party's views were taken into consideration by the signatories.

**NOW, THEREFORE**, the parties agree that the project alternative to be selected in the FHWA's Record of Decision, including all future phases, shall be administered in accordance with the following principles and stipulations in accordance with the following authorities as listed below.

#### **AUTHORITIES**

The authorities for this PA include, but are not limited to, the following:

- A. Various Federal Aid Highway Acts, included those codified at 23 U.S.C. §§ 101, 107, 138, 168, 204 & 317
- B. National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee)
- C. "Interagency Agreement between the U.S. Fish and Wildlife Service and the Federal Highway Administration Relating to Public Roads on the National Wildlife Refuge System," April 12, 1999
- D. National Environmental Policy Act of 1969 (Pub.L. 91-190, 83 Stat. 852), as amended (42 U.S.C. 4321 et seq.)
- E. Title IV of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577; 82 Stat. 1098), as amended (31 U.S.C. 6501 et seq.)

F. Federal Grants and Cooperative Agreement Act of 1977 (Pub.L. 95-224; 92 Stat. 3), as amended (31 U.S.C. 6301 et seq.)

G. Executive Order 13352, "Facilitation of Cooperative Conservation," August 30, 2004

## I. AGENCY RESPONSIBILITIES

- A. The FHWA is responsible for working with the States to provide the public with a safe and efficient National Highway System. FHWA is also responsible for administering grants-in-aid of public roads, including refuge roads and Scenic Byways. The section of NC 12 within the refuge is a public road that is part of the National Highway System and it is a Scenic Byway. As part of its grant administration responsibilities, FHWA must ensure that the scenic beauty of the refuge is preserved by minimizing and/or mitigating all unavoidable harm to the refuge caused by NC 12.
- B. The NCDOT is responsible for the design, construction and management of the highway system within North Carolina. The section of NC 12 within the refuge is part of North Carolina's highway system and is identified as a Strategic Highway Corridor (SHC). As a condition of Federal funding for the replacement of Bonner Bridge, NCDOT will be required to comply with the terms and conditions of FHWA's Record of Decision for the project. NCDOT understands that FHWA will incorporate this Partnership Agreement into its Record of Decision for the Bonner Bridge replacement project.
- C. The USFWS is responsible for the protection and management of lands and resources under its jurisdiction, and is vitally interested in the maintenance of a public refuge road system which will provide access for the protection, use and enjoyment of National Wildlife Refuge System areas and which will integrate with other transportation facilities.
- D. The NPS is responsible for national parks, a network of nearly 400 natural, cultural and recreational sites across the nation. The national parks have been set aside by the American people to preserve, protect, and share, the legacies of this land.
- E. The USACE is responsible for the regulation of impacts to the Waters of the United States. This includes the issuance of permits for compliance with Section 404 of the Clean Water Act.
- F. NCDENR is the lead stewardship agency for the preservation and protection of North Carolina's outstanding natural resources. NCDENR issues Section 401 certifications for impacts to streams and wetlands in compliance with Section 404 of the Clean Water Act.

## II. MUTUAL AGREEMENTS

- A. The parties recognize that action must be taken in the near future to address the structural deficiencies of the existing Bonner Bridge which are outlined in Section 1.3.3 of the Final Environmental Impact Statement.
- B. The parties recognize that the Refuge has been, and is expected to continue to be, significantly affected by forces of nature that cannot be predicted with the degree of certainty required to make prudent decisions today that would cover a period of fifty-one years into the future.
- C. The parties recognize that while a segment of NC 12 nearly 16 miles long was studied as part of the Bonner Bridge replacement project, NCDOT will only seek to implement "Phase I" – as depicted in the conceptual plan appended to this PA – at this time. No action will be taken at this time to construct any of the build alternatives studied for the project corridor outside of Phase I. All parties recognize that Phase I alone does not meet the purpose and need of the project.
- D. The parties agree to work cooperatively in furtherance of NCDOT's expeditious completion of the environmental studies required to obtain the approvals and permits required to begin construction of Phase I as soon as possible.
- E. The parties agree that the section of NC 12 located within the Refuge but outside of the limits of Phase I prior shall be maintained and managed under a separate agreement between the NCDOT and FWS.
- F. The parties recognize a mutual responsibility to cooperate for the purpose of preventing and/or mitigating any adverse impacts to birds, fish and wildlife caused by Phase I of the Bonner Bridge replacement project, as well as any impacts caused by the maintenance, and possible future relocations of portions, of NC 12.
- G. The parties recognize that because a public road predated the establishment of the Refuge there is a mutual responsibility to maintain the existence of a safe public road. The parties further recognize the FWS' authority to designate reasonable conditions or restrictions on the maintenance, and possible future relocations of portions, of NC 12 in order to protect refuge resources.
- H. The agencies concur that the remaining phases of work present substantial challenges before the appropriate agencies will be satisfied in order to grant applicable permit and approvals. It will be incumbent on NCDOT to provide the necessary information designated under the Authorities listed in this PA to the permitting agencies to satisfy their needs before permits and approvals are granted. At the time of permit application, all reasonable, practicable and feasible alternatives will be considered and evaluated for each phase. This evaluation will

- include avoidance, minimization and compensatory mitigation considerations for each selected alternative.
- I. The Parties agree to meet as needed to discuss matters of mutual concern affecting the development and implementation the NC 12 Management Plan for the transportation system on the Outer Banks, or any other potential mutual benefit to the Partners.
  - J. Through evaluation of the benefits and problems in implementing this PA, the parties may determine whether the PA could serve as a model for other cooperative programs and projects that affect the Partners and other transportation and environmental agencies and groups.

### **III. COMMITMENTS**

FHWA and NCDOT will ensure that the following measures are carried out as part of the NC 12 Transportation Management Plan:

- A. NCDOT will fund and implement a monitoring program on Hatteras Island in the project study area whose particulars would be developed in association with representatives of the Refuge, including development of decision-making criteria for translating monitoring findings into a decision to move forward with future phases. Planning for this monitoring program will be finalized prior to the start of physical construction of Phase I.
  1. Components of a monitoring program will include gathering of data (at appropriate time frames) related to:
    - Changing geomorphological characteristics (e.g., the width and elevation of the island, dune height, shoreline position, and nearshore bathymetry);
    - Relative distance from NC 12 to critical geomorphological features (e.g., shoreline, dune, estuarine shoreline)
    - Storm events and associated NC 12 maintenance activities.

- After each 5 year period, a report will be prepared that merges these data with that of other geologic and biological datasets from other ongoing studies by others.
2. On an annual (or post-storm) basis, NCDOT will, in consultation with representatives of the Refuge, identify from these data geomorphological trends relevant to a decision to

move forward with future phases or refine their location. Areas will be identified deserving of extra scrutiny will be identified during the annual consideration of monitoring program findings and what they mean in terms of the timing and location of the implementation of future phases. Based on past experience, warning signs could include:

- A distance between the shoreline and the road of less than 650 feet (198 meters) (650 feet is based on measurements of the landward extent of washover fans that developed during Hurricane Isabel and should generally allow natural shoreline processes to occur without notable effects on NC 12 operations);
- Areas with weak dunes (e.g., low dunes that lack vegetation) that potentially require higher levels of storm-related NC 12 maintenance activity, proximity of the dune to NC 12, and the rate dunes may be advancing towards NC 12 (this recognizes that the frequency of dune maintenance is highest when a dune is less than 25 feet [7.6 meters] from the road);
- Increases in erosion rates over past trends
- Increases in NC 12 storm-related maintenance frequency or activity over previous years.
- Determine the shoreline and dune conditions under which the need for storm-related maintenance tends to escalate.

Annual monitoring findings and NCDOT conclusions on their relation to future phase planning, programming, and implementation shall be reported to the Refuge for discussion. The conclusions may be refined based on Refuge input.

3. The FHWA and NCDOT shall coordinate with the Refuge to develop the following objectives for implementing future phases:
  - Language establishing standard criteria, such as, (1) no loss to the quantity and quality of habitat due to proposed project activities and (2) maintenance of the biological integrity, diversity and environmental health of the Refuge.
  - Evaluation criteria based on monitoring and assessment of the appropriate ecological and geological processes and the status and trends of Refuge habitat, fish, wildlife, and plants.

**B. Compliance with the National Environmental Policy Act (NEPA) and other Environmental Laws**

- Prior to any construction activity beyond Phase I, FHWA and NCDOT will prepare any additional documentation that is required to comply with NEPA and Section 4(f), as well as any other applicable environmental laws, prior to taking any action.

- Prior to any construction activity beyond Phase I, FHWA and NCDOT will coordinate with all Signatory and Concurring Parties and comply with Section 106 in accordance with the Section 106 Programmatic Agreement.

#### **IV. AMENDMENTS**

Should any of the Signatories believe that 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. Environmental conditions will be monitored for any changes prior to permitting of subsequent phases and the Parallel Bridge Corridor with NC 12 Transportation Management Plan may provide for any amendments that may result from environmental changes and need for permits at those times.

#### **V. DURATION**

This agreement shall be in effect until terminated in accordance with Section IV. Amendments, or until FHWA, in consultation with the other Signatory and Concurring Party(ies), determines that all phases of the project are completed. This PA is effective upon the signature and date of all parties.

**SIGNATORIES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
??????  
US Fish and Wildlife Service

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
McClendon  
United States Army Corps of Engineers

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
??????  
North Carolina Department of Environment and Natural Resources

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

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

**CONCURRING PARTIES:**

By: \_\_\_\_\_  
xxx  
Environmental Protection Agency

Date: \_\_\_\_\_

By: \_\_\_\_\_  
xxxx  
NOAA -Fisheries

Date: \_\_\_\_\_

By: \_\_\_\_\_  
xxxx  
N. C. Department of Cultural Resources, State Historic Preservation Office

Date: \_\_\_\_\_

DRAFT