



UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
OUTER BANKS GROUP

Fort Raleigh National Historic Site Wright Brothers National Memorial

Cape Hatteras National Seashore
1401 National Park Drive
Manteo, NC 27954
252-473-2111

IN REPLY REFER TO:

N16 (CAHA)

FEB 27 2007

COPY

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

Via: Federal Express Mail Service and Email: stephen.rynas@ncmail.net
Project: Programmatic Consistency Determination for Ramp and Dune Repair,
Cape Hatteras National Seashore

Dear Mr. Rynas:

Earlier last year, following the Thanksgiving Storm on the Outer Banks which was a sustained Nor'easter storm even inflict considerable damage to beaches, dunes and ramps, officials from the Park Service, NC Department of Transportation and the Division of Coastal Management toured the park on December 8, 2006 evaluating the damage and discussing potential remedial activities that are becoming repetitive following large or prolonged storm events. Considerable discussion centered around the Major CAMA Permit #86-99 which NCDOT holds under which it is able to effectuate storm damage repairs on the Outer Banks. The National Park Service now seeks to model such an arrangement and seeks a short term Programmatic Federal Consistency Determination on remedial work it performs to refill the primary and secondary dune lines where storm "blow-outs" occur. We appreciate you agency's continuing willingness to work with all concerned in protecting our ocean resource and its resident wildlife while facilitating public access to the National Seashore.

NC Highway 12 is situated in an area of special vulnerability due to dynamic coastline forces of waves, winds, currents and overwash causing "erosion and other adverse effects to public access and safety." In this coastal environment, at times of certain storm events frontal and primary dune repair is urgently needed in these Ocean Erodible and High Hazard Flood Areas of Environmental Concern (AEC) to protect Highway 12, the sole road access to Hatteras Island, used by a substantial population of residents, public agencies, and a vast number of visitors to the coast. Of primary concern is the safety of visitors to and residents within the National Seashore (Park) traversing Highway 12. This includes the potential necessity of evacuating those present during a storm event and the access of emergency vehicles that may be required during such an event. Also of high importance is the preservation of historic and cultural structures situated in the Cape Hatteras National Seashore ("Park") as well as maintenance buildings and staff residential structures. The

Park believes that the proposal and practices suggested within the Programmatic Federal Consistency Determination will aid the Park in attempting to preserve life and property while continuing to maintain the high level of accessibility possible to visitors and residents.

NPS proposes that North Carolina Department of Environment and Natural Resources (NCDENR) look favorably on all alternative approaches that accord with NC laws and coastal management strategy policies under proposed guidelines and constraints as governing restoration work under NPS's Programmatic Consistency Determination. As more definitively set out in the attached application and in accordance with Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972, as amended, Cape Hatteras National Seashore 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 States 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. The proposed action is consistent with the approved General Management Plan for the Cape Hatteras National Seashore and the National Park Services Management Policies (2001). The proposed action is consistent with the Interim Protected Species Management Strategy/Environmental Assessment issued January 2006. Details of the determination are provided through submission of the enclosed supporting narrative, photographs and drawing. Environmental screening and review is being conducted pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) and it is anticipated that the project will receive a Categorical Exclusion resulting in a finding of no significant impact to the environment.

We request the Division of Coastal Management to concur with this consistency determination. Again, we appreciate the cooperation and assistance your staff has afforded our Staff and the Park.

Sincerely,

/s/ Michael B. Murray

Michael B. Murray
Superintendent

Enclosures

cc:

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Chief, Resource Management, Cape Hatters National Seashore
Special Park Uses/Lands Coordinator, Cape Hatteras National Seashore

**Application for a
Programmatic Consistency Determination for Ramp Repair & Dune Repair
Dare County, North Carolina
United States National Park Service
Outer Banks Group
Cape Hatteras National Seashore
February 27, 2007**

Project Description

The National Park Service's (NPS), Cape Hatteras National Seashore (Park) seeks a three-year Programmatic Consistency Determination to repair dunes and ramps damaged by ocean overwash which threatens NC Highway 12, public safety, and public beach access in Cape Hatteras National Seashore. This damage is due to hurricanes, northeasters, and other high-intensity storms which exacerbate long-term erosion of the Atlantic coastline.

Subject to the limitations and procedures set out below, NPS seeks ongoing permission to execute emergency repairs to frontal and primary dunes as needed under North Carolina's Coastal Management Area Act and Dredge Fill Law, Chapter 7 of Title 15A of the State's Administrative Code.

A site meeting of representatives of CAMA, NCDOT and NPS was held on December 8, 2006 at which the following framework and specifics were worked out.

Guidelines and Constraints

NC Highway 12 is situated in an area of special vulnerability due to dynamic coastline forces of waves, winds, currents and overwash causing "erosion and other adverse effects to public access and safety." In this coastal environment, frontal and primary dune repair is urgently needed in these Ocean Erodible and High Hazard Flood Areas of Environmental Concern (AEC) to protect Highway 12, the sole road access to Hatteras Island, used by a substantial population of residents, public agencies, and a vast number of visitors to the coast.

NPS proposes that North Carolina Department of Environment and Natural Resources (NCDENR) consider anew all alternative approaches that accord with NC laws and coastal management strategy policies under the following guidelines and constraints as governing restoration work under NPS's Programmatic Consistency Determination:

- In the interests of timeliness and effective use of scarce resources, NPS will act in cooperation with NCDOT, which is undertaking Highway 12 repairs under existing Major CAMA Permit #86-99 to repair "Hot Spots." NCDOT will

contribute sand for NPS restoration projects if available when there is a direct flooding danger to Hwy 12. NPS will also seek active cooperation with Dare County government and the US Fish and Wildlife Services.

- In effecting repairs, NPS will act in full conformity with 15A NCAC 07H .0301, et. seq. It will preserve the natural ecological conditions of the barrier dune, beach and ocean inlet systems.
- NPS will abide completely by CAMA requirements. Before initiating any ocean overwash repair and restoration, NPS will seek specific approval by giving CAMA 7-14 day prior written notification, including drawings and GPS readings.
- NPS will respect CAMA's preference that all overwash restoration work will have a long-term focus, taking into account the dynamic nature of coastal environment, rather than short-term fixes.
- NPS will insure that restoration action will benefit only the general public, Park infrastructure, cultural and historic structures and not individual private property owners.
- In accordance with Section 307 (c.)(1) of the Federal Coastal Zone Management Act of 1972, as Amended, Cape Hatteras National Seashore will determine before undertaking restoration work that the proposed action is consistent to the maximum extent practicable with the enforceable policies of North Carolina's coastal management program.
- All proposed ocean overwash repair action shall meet the management objective of 15A NCAC 07H .0208 and 7H .0209 and will not result in degradation of the estuarine and ocean system.

Specific Reconstruction Requirements

NPS requests that NCDENR approve the following specific reconstruction requirements under the three-year Programmatic Consistency Determination to repair dunes and ramps resulting from ocean overwash damage:

(a) Dune reconstruction and repair (15A NCAC 07H .0308 (4)(b))

- Existing primary and frontal dunes will not be broadened or extended in an oceanward direction;
- Relocation of sand within the AEC will be limited to the current crest of the primary dune line or landward toe of a frontal dune;
- Repaired dunes will be aligned, be given the same general configuration and ridge heights as adjacent natural dunes;
- Sand used for dune reconstitution will be of the same general characteristics as sand in the area in which it will be placed;
- Work will be accomplished in such a manner to minimize damage to existing vegetation. When appropriate and as resources are available disturbed areas will be replanted or temporarily stabilized until planting can be completed successfully;

- When appropriate and as resources are available, diagonal sand fencing will be erected on eroded seaward dunes and blowout areas to accumulate sand and mitigate erosion;

(b) Beach Access Ramps:

- As an alternative to “Hatteras Ramps” (15A NCAC 07H .0308 (c)(4): and in accordance with CAMA’s approved NPS’s Ramp 27 Consistency Filing, access ramps over the primary dune may be surfaced with 12 inches of compacted clay/clam shell mixture.
- Repaired ramps will be restored to their length and width prior to the storm event;
- Markers will be installed along the ramp to ensure that the ramp is not widened by vehicular use.
- Ramp shoulders will have the same height as adjacent dune ridges.
- Where appropriate and as resources are available, ramp shoulders will be sprigged and sand fenced to trap windblown sand and curb wind erosion.

(c) Damaged gravel-surfaced parking lots

- Sand on the parking lot (to a maximum depth of 12 inches) will be pushed back seaward to reconstitute the dune.
- Where needed, the seaward edge of damaged parking lots will be set back 120 feet from first permanent vegetation line.
- Eroded gravel parking lots can be reconstructed with gravel in terms of 15A NAC 07H.0309 (a)
- To the extent practicable gravel and foreign material on beaches will be removed and incorporated into parking lot surfaces.

(d) Beach Bulldozing 15A NAC 07H.0308 (a) (4))

- Sand above the high tide-line may be bulldozed to reform a continuous frontal dune.
- Beach grading will follow the pre-emergency slope as closely as possible, and maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach.
- Below the high tide line equipment will not will not move sand exceeding one foot in depth measured from the pre-activity surface elevation

(e) Minimal vegetation impact

- Federal or state listed plants or plants falling under the category of special concern (e.g., sea beach amaranth, dune blue curls) would not be compromised.
- Vegetation in altered areas would be expected to recover within the following growing season. If vegetation does not recover within one growing season, or by other natural process (such as overwash creating habitat), as resources are available, the National Seashore would initiate restoration of vegetation.

Approved vegetation currently includes: Sea Oats (*Uniola Paniculata*), American Beachgrass (*Ammophila Breviligulata*), Bitter or Seaside Panicum (*Panicum Amarum*), Saltmeadow Cordgrass (*Spartina Patens*) and Seashore Elder (*Iva Imbricata*)

Other Requirements

NEPA Compliance

No part of this application conflicts with National Park Service NEPA guidelines. This consistency determination will be a part of the Categorical Exclusion documentation.

Site Inspection

A site inspection by CAMA, NCDOT and Park Staff was conducted December 8, 2006. NPS would welcome site visits to impacted areas as work under this Programmatic Determination proceeds in the next three years. The December site visit revealed that no wetlands were present. No state-listed or federal threatened or endangered species or species of concern were present.

Duration

It is requested that the Programmatic Consistency Determination run for a period of three years, matching the three-year open major CAMA permit to NCDOT to repair "Hot Spots." Should climatic factors and sea level changes persist, it may necessary to consider renewing the determination if justified by conditions at the time.

Conformity

This application is submitted to ensure conformity with 15 CFR Part 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". Cape Hatteras National Seashore believes that this Programmatic Consistency Filing is fully in conformity and fully consistent with the standards and management objectives of North Carolina's State Guidelines for: Areas of Environmental Concerns, 15A NCAC 07H.0101, et seq.; The Estuarine and Ocean Systems, 15A NCAC 07H.0201, et seq.; and Ocean Hazard Areas, 15A NCAC 07H.0301, et seq. The proposal meets the management objective of 15A NCAC 07H .0209 and 7H .0208 and would not result in degradation of the estuarine and ocean system.

Timing

To avoid possible adverse impacts to public access and environmental resources as well as recreational usage of the area, repairs will be as soon as possible with active support from NPS and NCDOT staff and services.

Design Alternatives

The project is environmentally compatible with the use of the area as a transit corridor, wildlife refuge, and recreation beach. No other design alternatives that may not meet the State standards for this objective include are proposed or are under consideration at this time.

Public Access to the Coasts

Public access is specifically identified as one of the key priorities of the Coastal Zone Management Act (CZMA) of 1972. In its Declaration of Policy, it states:

“The Congress finds and declares that it is the national policy...to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development, which programs should at least provide for – public access to the coasts for recreation purposes” [§1452. Section 303(2) (E)]. Maintaining Highway 12 in such a manner as to provide safe public access and egress to and from the Cape Hatteras National Seashore especially in times of storm events is in conformity with this policy.

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 the shoreline access stated in 15 A NCAC 7M, Section .0303. Maintaining Highway 12 in such a manner as to provide safe public access to Cape Hatteras National Seashore is in conformity with these policies.

Areas of Environmental Concern (AEC)

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

15A NCAC 07H .0302 Significance of the Ocean Hazard Category recognizes public as well as private ownership within the ocean hazard area and the vast number of visitors to the coast and the intensity of interest in the coastal area which portrays the area which is the subject of this submittal.

15A NCAC 07H .0303 Management Objectives of Ocean Hazard Areas while stating the need to protect primary and frontal dunes, it is the CRC’s objective to provide policies and standards to eliminate unreasonable danger to life and property while

balancing financial, safety and social factors in hazard area development. The purpose of CRC Rules includes the objective to protect present common-law and statutory public rights of access to and the use of lands and waters of the coastal area. The project which is the subject of the consistency determination strikes that balance by avoiding the dune area and insuring access to an area of special interest.

15A NCAC 07H .0306 General Use Standards for Ocean Hazard Areas establishes the standards for planned development to protect life and property. This section states "Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted." [See (a) (6)] Paragraph (b) prohibits development that involves significant removal or relocation of the primary dune or disturbance to other dunes within the ocean hazard area not otherwise allowed by Rule .0308(b). Also, please note that the activity sought in the Programmatic Consistency Determination does constitute "development" as defined under the North Carolina's Coastal Area Management Act. GS 113A-103 provides:

"Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in GS 113A-113(b)(2) or (b)(5).

The applicant believes the activity hereunder is remedial in nature restoring that which has been disturbed by storm event and qualifies as being specifically excluded as maintenance and repairs from the definition of development under 15A NCAC 07K.0103.

15A NCAC 7H .0510 Significant Coastal Historic Architectural Resources establishes management objectives for the protection of significant coastal historic architectural resources. The project meets the management objectives of 07H .0510.

North Carolina Coastal Program Policies

15A NCAC 07M .0300 Shorefront Access Policies - establishes management objectives to ensure public access to public beaches and waters. The proposed Programmatic Consistency Determination is consistent with the access policies of this Act.

15A NCAC 07M .0800 Coastal Water Quality Policies - establishes management objectives for waters of the State within the coastal area that has a potential for uses

which require optimal water quality. The proposed action will not degrade or deteriorate the water quality of the Pamlico Sound.

Required State, Federal, and Local Permits

No permit from the U.S. Army Corps of Engineers (USACE) Regulatory Office is required for the performance of the work and no public notice coordination for the permit is required.

This proposed Programmatic Consistency Determination to control ocean overwash damage to Hwy. 12 complies with conditions of the North Carolina Division of Water Quality's (NCDWQ) General Water Quality Certification (GC) and will not cause a substantial modification to waters or wetlands.

Supporting Documentation

Supporting Documentation, including photographs and GIS locations, will be provided under this Programmatic Consistency Determination on a case by case basis 7- 14 days in advance, as outlined above.

Conclusion

The Park seeks a three-year Programmatic Consistency Determination to repair dunes and ramps resulting from ocean overwash damage which threatens NC Highway 12, public safety, and public beach access in Cape Hatteras National Seashore. This damage is due to hurricanes and sustained storms which exacerbate long-term erosion of the Atlantic coastline.

Subject to the limitations and procedures, NPS seeks ongoing permission to execute emergency repairs to frontal and primary dunes as needed under North Carolina's Coastal Management Area Act and Dredge Fill Law, Chapter 7 of Title 15A of the State's Administrative Code.

This proposed project will not have "significant impacts" to coastal resources. The proposed project is consistent, to the maximum extent practicable, with the enforceable policies of North Carolina's federally approved coastal management program.

February 27, 2007