

Laws that Affect Alternatives Development and Selection

The following are the environmental laws and Presidential Executive Orders that the North Carolina Department of Transportation (NCDOT) must consider in addition to the National Environmental Policy Act (NEPA) and the North Carolina Environmental Policy Act when developing an Environmental Impact Statement. The Federal Highway Administration's (FHWA) NEPA website is at <http://environment.fhwa.dot.gov/projdev/index.asp>.

The National Historic Preservation Act of 1966

The National Historic Preservation Act of 1966 was implemented to preserve historical and archaeological sites throughout the United States. The act created the National Register of Historic Places, the list of National Historic Landmarks, and State Historic Preservation Offices. The National Historic Preservation Act is found at: <http://www.cr.nps.gov/local-law/nhpa1966.htm>.

Section 106 of the National Historic Preservation Act requires agencies to take into account the effects of their undertakings on historic properties. NCDOT must consult with the State Historic Preservation Office regarding potential effects and mitigation of those effects to properties listed on or eligible for inclusion in the National Register of Historic Places. The FHWA's website related to historical and archaeological preservation is at: <http://environment.fhwa.dot.gov/guidebook/results.asp?selSub=55>. An implementation guide to Section 106 of the National Historic Preservation Act is found at: http://www.environment.transportation.org/environmental_issues/historic_cultural/.

Executive Order on Environmental Justice (Executive Order 12898)

Under this Presidential Executive Order, agencies are required to make environmental justice part of their mission by identifying and addressing, as appropriate, the potential for disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Both Alligator (minority) and East Lake (low income) are communities to which this executive order applies. Executive Order 12898 is found at: <http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>. FHWA's guidance for implementing the Executive Order can be found at: http://www.fhwa.dot.gov/environment/environmental_justice/.

Wildlife Refuge System Improvement Act of 1997

The National Wildlife Refuge System Administration Act of 1966 provides guidelines and directives for the administration and management of wildlife refuges, wildlife protection and conservation areas, wildlife and game ranges, wildlife management areas, and waterfowl production areas. The later National Wildlife Refuge System Improvement Act of 1997 amended and built upon the 1966 act.

Under the 1997 act, refuge managers cannot permit a new or expanded use of refuge lands unless they determine that the proposed use is compatible with the mission and purpose of the

refuge. The refuge manager may permit a minor use of refuge lands if it is done for safety reasons. These requirements will apply to any use of Alligator River National Wildlife Refuge lands by a widened or relocated road right-of-way. The 1997 act is found at: <http://www.fws.gov/northeast/planning/downloads/NWRImprovementact.pdf>.

Endangered Species Act of 1973

The Endangered Species Act of 1973 provides for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend. In general, the role of the act was to: authorize the determination and listing of species as endangered and/or threatened; prohibit unauthorized taking, possession, sale, and transport of endangered species; provide authority to acquire land for conservation; and authorize the assessment of civil and criminal penalties for violating the act. NCDOT must consult with the US Fish and Wildlife Service and the National Marine Fisheries Service with regard to the potential for a project to have an adverse impact on threatened or endangered species and critical habitat for such species. Specific citation of the Endangered Species Act of 1973 is found at: <http://www.fws.gov/laws/lawsdigest/ESACT.HTML>. FHWA guidance related to the Endangered Species Act is found at: http://environment.fhwa.dot.gov/ecosystems/laws_esaguide.asp.

Clean Water Act of 1977

The Clean Water Act of 1977 established the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. It also made it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. The Clean Water Act is found at: <http://epw.senate.gov/water.pdf>.

Any entity that proposes to dredge or fill waters of the United States, including jurisdictional wetlands, is required to obtain a permit for doing so from the US Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act. Section 404 of the Clean Water Act is found at: <http://water.epa.gov/lawsregs/guidance/wetlands/sec404.cfm>.

Any entity that applies for a Section 404 permit is required to provide USACE with a Section 401 certification from the North Carolina Division of Water Quality that indicates that the discharge will not have an adverse impact on water quality. Section 401 of the Clean Water Act is found at: <http://water.epa.gov/lawsregs/guidance/wetlands/sec401.cfm>.

Coastal Area Management Act of 1974

The North Carolina Coastal Area Management Act (CAMA) of 1974 is applicable in all 20 coastal counties. It is the state's companion legislation for implementing its part of the federal Coastal Zone Management Act of 1972. The federal act provides for management of the nation's coastal resources and balances economic development with environmental conservation. It includes a National Coastal Zone Management Program. More information on the federal act can be found at: http://coastalmanagement.noaa.gov/czm/czm_act.html.

In general, the goals of North Carolina's CAMA are to: provide a management system capable of preserving and managing existing natural ecological conditions; ensure that development and preservation in the coastal area proceeds in a manner consistent with the area's ecological considerations; and establish policies, guidelines and standards for natural resource protection, responsible economic development, recreation and tourism, cultural resource protection, and protection of existing public land and water rights. The North Carolina Coastal Resources Commission issues CAMA permits for projects that affect their Areas of Environmental Concern (AEC). Four types of AEC occur within the US 64 project area: coastal wetlands, estuarine waters, coastal shorelines, and public trust waters. NCDOT projects must be compatible with Dare and Tyrrell county land uses plans. CAMA is found at: <http://dcm2.enr.state.nc.us/rules/rules.htm>.