



**U.S. Department of Transportation  
Federal Railroad Administration**

# Aberdeen Carolina & Western Railway Congestion Mitigation Project

## **Finding of No Significant Impact**



September 2022

## Table of Contents

1.0	Project Description .....	1
2.0	Procedural History and NEPA Compliance.....	3
3.0	Purpose and Need.....	3
	Congestion .....	3
	Operational Changes.....	4
	Rail-served Industry .....	4
4.0	Alternatives Considered.....	4
5.0	Preferred Alternative .....	4
6.0	Results from the Environmental Analysis .....	10
7.0	Public and Agency Coordination .....	12
8.0	Errata.....	12
9.0	Environmental Commitments.....	15
10.0	Conclusion.....	17

## Appendices

Appendix A – Environmental Assessment - Notice of Availability

Appendix B – Environmental Assessment – Comments and Responses

## 1.0 Project Description

The Proposed Action includes the construction of new facilities at five (5) locations. The five Sites include three (3) storage and passing sidings, two (2) storage and switching yards, and one (1) warehouse (see [Figure 1](#)). The purpose of the Proposed Action is to address congestion issues on the existing railroad. All construction activities would take place within the railroad right-of-way (ROW) or on land owned by Aberdeen Carolina & Western Railway (ACWR). A description of the project activities and summary of adjacent land use is provided below.

### **Mint Hill, North Carolina (Mecklenburg County)**

*Mint Hill Siding* – Proposed Action activities at this location include construction of 5,000 linear feet of new storage and passing siding along the existing railroad located between Albemarle Road and I-495. The railroad ROW in this location varies between 150 to over 200 feet wide with a general clear zone of 50 feet. Surrounding land use is mainly wooded with sparse, large lot residential development. All work would be completed within the existing railroad ROW owned by ACWR.

*Mint Hill Storage Yard and Mint Hill Warehouse* – Proposed Action activities at this location include construction of new storage track spurs and a warehouse on a 66-acre property located along Allen Station Road. Construction activities include grading for new roads, a parking area, loading docks, eight new storage track spurs totaling 18,000 linear feet, stormwater basins, and an approximately 200,000- to 400,000-square-foot warehouse. The parcel is woodland located in a quickly developing area. Previous infrastructure (including utilities, road grading, and stormwater basins) remains on the property. Surrounding land uses include Rocky River High School and Hope Community Fellowship along with commercial and medium- to high-density residential developments. All work would be completed on land owned by ACWR.

### **Midland, North Carolina (Cabarrus County)**

*Midland Siding* – Proposed Action activities at this location include construction of 3,100 linear feet of new storage and passing siding approximately two (2) miles east of Midland. The surrounding land use is mainly wooded. The railroad ROW in this location is approximately 120 feet wide with a bump-out at a stream crossing to approximately 200 feet wide. The track is on fill through this section with a general clear zone of 50 feet. All work at this location would take place within the existing railroad ROW owned by ACWR.

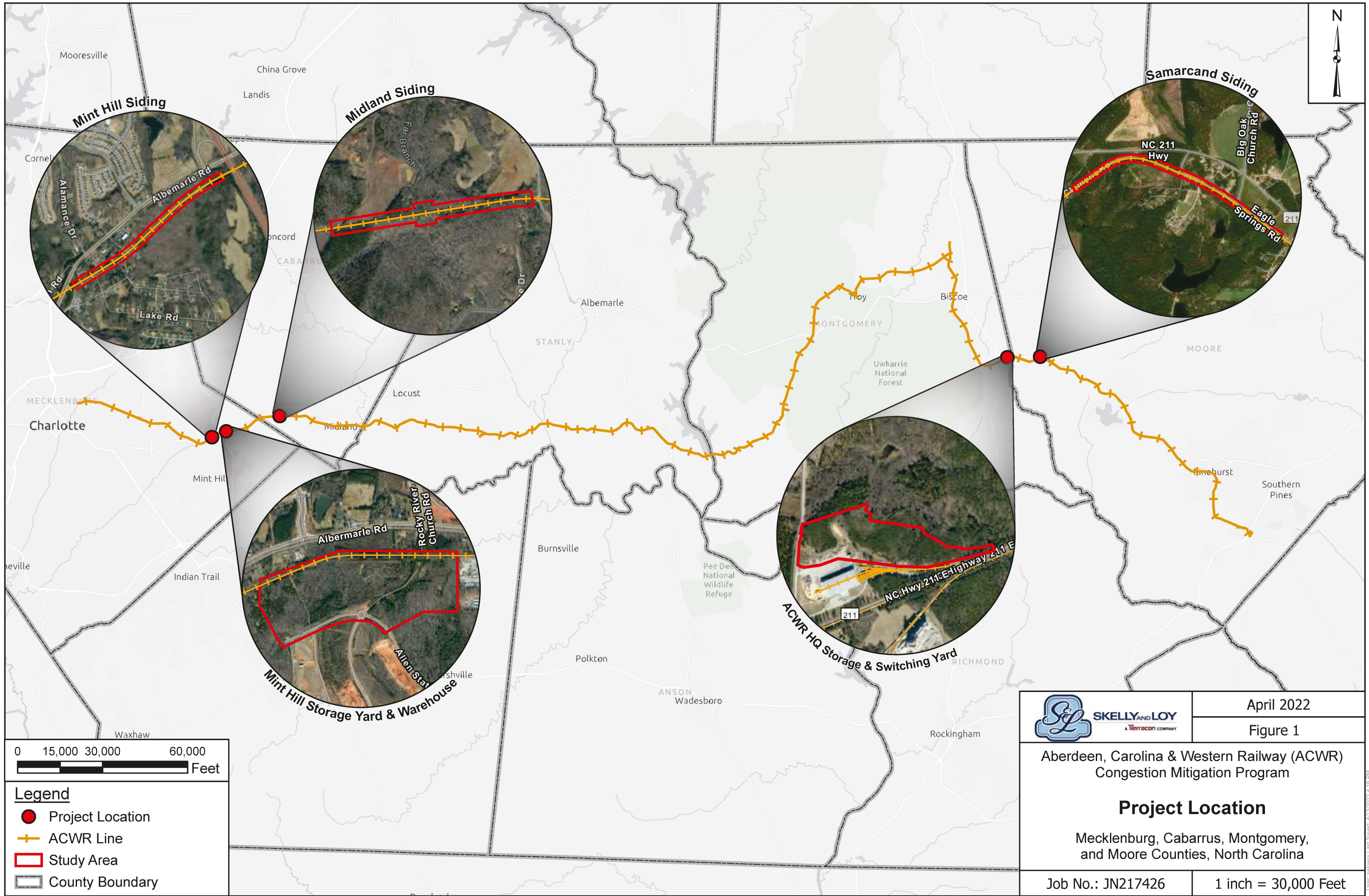
### **Aberdeen Carolina & Western Railway Headquarters, Candor, North Carolina (Montgomery County)**

*ACWR HQ Storage Yard* – Proposed Action activities at this location include construction of 12 new storage track spurs totaling up to 20,000 linear feet located north of the existing ACWR headquarters building. The area is currently cleared. Surrounding land use includes wooded and agricultural land. All work would be completed on land owned by ACWR.

### **Samarcond and Eagle Springs, North Carolina (Moore County)**

*Samarcond Siding* – Proposed Action activities at this location include the construction of 7,000 linear feet of new, double-ended passing and storage siding along the existing railroad. The railroad ROW in this location is approximately 100 feet wide with a general clear zone of 50 feet. Surrounding land use is wooded and agricultural intermixed with residential development. All work would be completed within the existing railroad ROW owned by ACWR.





## 2.0 Procedural History and NEPA Compliance

ACWR is proposing to use Federal Railroad Administration (FRA) Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program and Railroad Rehabilitation and Improvement Funding (RRIF) to administer a congestion mitigation project. Due to the use of federal funds, the Proposed Action must comply with the National Environmental Policy Act (NEPA) of 1969. To document the Proposed Action and its effects on the natural, cultural, and social environment, the FRA has prepared an Environmental Assessment (EA), published July 29, 2022. The EA and this Finding of No Significant Impact (FONSI) were prepared in accordance with NEPA (42 U.S.C. § 4321 *et seq.*) and Council on Environmental Quality (CEQ) regulations (40 C.F.R. Parts 1500-1508), 23 C.F.R. Parts 771 and 774.

## 3.0 Purpose and Need

The purpose of the Proposed Action is to address existing congestion along ACWR's railroad line. Reducing congestion would improve viability and long-term sustainability of freight rail service from Charlotte to Raleigh. Elements of the Proposed Action that reduce congestion and enhance viability include:

- Increased storage to reduce mainline congestion (storage and passing sidings)
- Additional switching tracks to sort and re-order railcars (switching and storage yards)
- Additional rail-served warehouse within metropolitan area (warehouse)

The project need is due to increased congestion, increased demands related to Precision Scheduled Railroading (PSR) operational changes, and a lack of rail-served industry in the Charlotte Metropolitan Statistical Area (MSA). The needs are further detailed below.

### Congestion

**Traffic Patterns** – An increase in unit train traffic coming from Charlotte to Candor creates congestion on the existing rail line. Inadequate tracks to clear the mainline for westbound traffic results in a half-day delay for eastbound traffic. Currently, westbound traffic is delayed for half a day to wait for eastbound traffic to clear the mainline. The additional storage and passing sidings would allow for better flow of traffic with shipments coming from three interchanges by three different railroads. Additionally, storage and passing sidings would improve system and service performance on the Piedmont and Sandhills Divisions by reducing the congestion caused by the need to store cars on the mainline. By adding sidings and yards, the project would increase ACWR capacity, mitigate traffic congestion, improve equipment cycle time, drastically reduce mainline track blockages, and provide adequate track space for increased switching activities.

**Storage** – At any one time, the existing rail line may have up to five (5) 90-car trains on the line which must be staged and temporarily stored. This has caused frequent congestion, blocking of road crossings, service delays, and inefficiencies for traincrews. The current PSR climate has forced shippers to store fewer railcars on Class I railroads and more railcars on shortline railroads. The ACWR line has had over 750 railcars stored on the mainline at estimated peak levels. Additional storage yards will provide much-needed congestion relief along the ACWR line.

**Sorting and Reordering** – Increased inbound miscellaneous commodity traffic requires frequent switching and re-ordering for customers. Multiple switches are required per day for commodities that must be delivered in a sequential order as requested by the customer. The ACWR needs additional switching tracks



to perform the sorting and re-ordering of railcars due to recent traffic pattern changes, and it struggles operationally to find places to perform such switching activities. This would enhance the railroad's productivity by reducing operational inefficiencies, increasing equipment cycle times to avoid congestion issues and blockage of road crossings, which increases service delays and inefficiencies for train crews.

### Operational Changes

The ACWR is required to sequence outbound loads in order of each railcar's end destination. Additionally, Class I railroad companies have begun to use interchange yards to perform their own switching instead of traditional hump yards. The ACWR struggles operationally to find places to perform such switching activities.

### Rail-served Industry

Charlotte MSA's growth and lack of viable rail-served buildings add to commercial traffic on the highway system and have increased industrial rental rates to all-time highs. There are repeated requests from existing and prospective railroad customers for a modern rail-served warehouse and distribution facility in the area. Current raw plastics customers require covered square footage to manipulate bulk products into various smaller packaging forms. A warehouse and distribution facility would offer direct access to rail, avoiding additional highway congestion while providing affordable rail-served space to facilitate growth of rail-based transportation.

## 4.0 Alternatives Considered

The EA included the review of two alternatives, the No-Build Alternative and Build Alternative. The No-Build Alternative constitutes the "Do Nothing" Alternative where none of the proposed improvements would be made. The Build Alternative constitutes the Proposed Action for each project Site as described in [Section 5.0 Preferred Alternative](#).

## 5.0 Preferred Alternative

The Preferred Alternative includes construction of new facilities at five (5) locations. The five (5) Sites include three (3) storage and passing sidings, two (2) storage and switching yards, and one (1) warehouse. All construction activities would take place within the railroad ROW or on land owned by ACWR. Proposed activities at each Site, along with location map and photo, are provided in [Table 1](#).

Table 1: Preferred Alternative Details



Proposed Activities	Location
<p><b>Mint Hill Siding</b></p> <p>Construction of 5,000 track feet of new storage and passing siding along the existing railroad located between Albemarle Road and I-485. This work would include minor earth work (fill) to establish the grading necessary to construct the additional track. Construction of this siding would be minor in intensity and short in duration, with construction anticipated to take approximately three (3) months. The existing railroad would remain operational during construction.</p>	 <p><b>1: Mint Hill Siding</b></p>  <p>Mint Hill Siding, looking west at HWY 24/27 bridge.</p>

Table 1: Preferred Alternative Details


Proposed Activities	Location
<p><b>Mint Hill Storage Yard and Warehouse</b></p> <p>Construction of new storage track spurs and warehouse on a 66-acre property located along Allen Station Road. Construction activities include grading for new roads, parking area, loading docks, eight (8) new storage track spurs totaling 18,000 track feet, stormwater basins, and an approximate 200,000- to 400,000-square-foot warehouse. This work would include earth work (cut and fill) to establish the grading necessary to construct the storage yard, warehouse, parking, and road network along with stormwater facilities. Construction of this storage yard and warehouse would be moderate in intensity and duration, with construction anticipated to take approximately 18 months. The existing railroad would remain operational during construction.</p>	 <p><b>2. Mint Hill Storage Yard and Warehouse</b></p>  <p>Mint Hill Warehouse site, looking north.</p>



Table 1: Preferred Alternative Details



Proposed Activities	Location
<p><b>Midland Siding</b></p> <p>Construction of 3,100 track feet of new storage and passing siding approximately two (2) miles east of Midland, North Carolina. This work would include moderate earth work (fill) to establish the grading necessary to construct the additional track. Two culvert pipes would be extended to accommodate the additional fill slope. Construction of this siding would be minor in intensity due to minimal disturbance and earth work within the ROW and short in duration, with construction anticipated to take approximately three (3) months. The existing railroad would remain operational during construction.</p>	 <p><b>3. Midland Siding</b></p>  <p>Midland site, looking east.</p>

Table 1: Preferred Alternative Details





Proposed Activities	Location
<p><b>ACWR HQ Storage Yard</b></p> <p>Construction of 12 new storage track spurs totaling 20,000 track feet located north of the existing ACWR headquarters building. This work would include minor earth work (cut and fill) to establish the grading necessary to construct the storage yard. Construction of this storage yard would include earthwork and stormwater facilities. The work would be minor in intensity and duration, with construction anticipated to take approximately six (6) months. The existing railroad would remain operational during construction.</p>	 <p><b>4. ACWR HQ Storage &amp; Switching Yard</b></p>  <p>ACWR Storage Yard, looking east.</p>



Table 1: Preferred Alternative Details

Proposed Activities	Location
<p><b>Samarcand Siding</b></p> <p>Construction of 7,000 track feet of new, double-ended passing and storage siding along the existing railroad. This work would include minor earth work (fill) to establish the grading necessary to construct the additional track. Construction of this siding would be minor in intensity and short in duration, with construction anticipated to take approximately three (3) months. The existing railroad would remain operational during construction.</p>	 <p><b>5. Samarcand Siding</b></p>  <p>Samarcand Siding, looking east.</p>



## 6.0 Results from the Environmental Analysis

The EA inventoried the environmental resources within the defined Study Area, disclosed and analyzed impacts to those resource areas, and identified potential mitigation opportunities to minimize impacts. A summary of the impacts and mitigation measures is presented in [Table 2](#).

**Table 2: Summary of Impacts and Mitigation Measures**

<b>Resource</b>	<b>Build Alternative Anticipated Impacts</b>	<b>Build Alternative Mitigation Measures</b>
Air Quality, GHG, Climate Change	Impacts are below US EPA de minimis. No further analysis required.	No mitigation required; best management practices (BMPs) proposed to reduce temporary impacts.
Noise and Vibration	No adverse noise impacts.	No mitigation required; BMPs proposed to reduce temporary impacts.
Farmland and Forest	Statewide Important Soil impacts and forest impacts.	No mitigation.
Water Quality	No decrease in water quality is anticipated with adherence to state and federal permitting requirements. ACWR Storage Yard is within a designated Water Supply Watershed.	ACWR Storage Yard design includes 30-foot buffer around wetland and watercourses.
Wetlands and Watercourses	No wetland impacts; 0.04 acre of stream impacts.	Mitigation will be determined through coordination with the United States Army Corps of Engineers (USACE) during the Section 404 permitting process.
Threatened and Endangered Species	May affect the Northern Long-eared Bat (NLEB). May affect, not likely to adversely affect the Smooth Coneflower, Schweinitz’s Sunflower and Michaux Sumac. No effect to other federal and state species.	Based on the USFWS Asheville Office concurrence letter dated September 8, 2022, ACWR will conduct all tree removal between October 15 and April 1 of any given year, outside the active bat season, to reduce impacts to bats.

Table 2: Summary of Impacts and Mitigation Measures

Resource	Build Alternative Anticipated Impacts	Build Alternative Mitigation Measures
Cultural and Historic Resources	No historic properties were identified within the Study Area. Section 106 consultation with the North Carolina State Historic Preservation Officer (NC SHPO) resulted in a determination of no historic properties affected.	No mitigation.
Section 4(f)/6(f) and Parks and Recreation	No Section 4(f) or Section 6(f) resources present.	No mitigation.
Hazardous Material and Hazardous Waste	No hazardous waste concerns.	No mitigation; however, should waste be encountered during construction, it will be disposed of in accordance with appropriate federal, state, and local regulations.
Land Use	Minor change in land use within designated growth areas.	No mitigation.
Demographics and Environmental Justice	No disproportionately high and adverse effect on Environmental Justice (EJ) populations.	No mitigation.
Public Health, Safety and Security	Increased public safety along at-grade crossings.	No mitigation.
Transportation and Energy Use	Increase in efficiency would reduce railroad and road congestion as well as energy consumption.	No mitigation; positive impact.
Construction Period Impacts	Minor water quality, air, noise, and private crossing impacts anticipated during construction.	Soil erosion BMPs to reduce water quality issues, well-maintained equipment to reduce air and noise impacts, and coordination with property owners with private crossing prior to construction are proposed.
Indirect and Cumulative Impacts	Minor indirect and cumulative impacts.	No mitigation.

## 7.0 Public and Agency Coordination

Public and Agency coordination was undertaken as part of the NEPA process. The EA for the project was approved and published by FRA on July 29, 2022. An email Notice of Availability was sent to various federal, state, and local stakeholders announcing the EA availability. An advertisement was placed in the *Charlotte Observer* on August 3, 2022. Copies of the Notice of Availability and newspaper ad are provided in [Appendix A](#). Comments on the EA were accepted via email or mail through August 31, 2022. A total of five (5) agency comments were received and are summarized below. No public comments were received. Comments and responses and original agency letters or emails are included in [Appendix B](#).

The USACE, Wilmington District, Ashville and Charlotte Regulatory Office provided comments regarding permit requirements for any fill in the Waters of the United States (WoUS) at the Midland Siding Site. Further coordination will be necessary during final design and permitting.

The United States Department of Agriculture, Natural Resources Conservation Service, Raleigh Office provided guidance related to the Farmland Protection Policy Act (FPPA) review from the Natural Resources Conservation Service. This coordination was previously completed and included in the EA. No further action is required.

The United States Fish and Wildlife Service (USFWS), Asheville Ecological Services Field Office provided comments regarding impact determinations for the federally listed plant species and the upcoming uplisting of the NLEB to endangered and also provided suggested edits to the text of the EA. A follow up call was held with the USFWS on August 26, 2022. FRA provided a revised submittal to the USFWS on August 30, 2022, and the USFWS concurred with FRA's revised impact determinations in a letter dated September 8, 2022.<sup>1</sup> Relevant changes are noted in [Section 8.0, Errata](#), and the associated correspondence is provided in [Appendix B](#).

The USFWS Raleigh Ecological Services Field Office provided an email response that the Raleigh Field Office concurs with FRA's species determinations for the two sites in their office work area. No further action is required.

The NC SHPO provided a letter concurring that no historic resources would be affected by the project. No further action is required.

## 8.0 Errata

This section includes revisions to the ACWR Congestion Mitigation Project Environmental Assessment (July 2022). Changes are noted in *blue italics*.

Signature Page – Pursuant to paragraph – Removed reference to FRA Procedures for Considering Environmental Impacts and added reference to 23 C.F.R. Parts 771 and 774. First paragraph, first three lines should read:

---

<sup>1</sup> *In its September 8 letter, after concurring with FRA's impact determinations, the USFWS also noted, "As we have provided concurrence with a NLAA determination above, section 7 consultation would not need to be reinitiated if the proposed rule to uplist the northern long-eared bat becomes final and the 4(d) rule no longer applies."*



*National Environmental Policy Act (42 USC § 4321 et seq.) and implementing regulations (40 CFR Part 1500 et seq.), Section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. § 303(c)), 23 C.F.R. Parts 771 and 774;*

**Page 2 - Table 1 – Threatened and Endangered Species – Build Alternative Anticipated Impacts** – The effect determinations were changed to “may affect” for the NLEB and “may affect, not likely to adversely affect” for the plant species. Table 1, eighth row, second column, should read:

*May affect the Northern Long-eared Bat (NLEB). May affect, not likely to adversely affect the Smooth Coneflower, Schweinitz’s Sunflower and Michaux Sumac. No effect to other federal and state species.*

**Page 2 - Table 1 – Threatened and Endangered Species – Build Alternative Mitigation Measures** – The mitigation was updated related to the NLEB. Table 1, eighth row, third column, should read:

*Based on the USFWS Asheville Office concurrence letter dated September 8, 2022, ACWR will conduct all tree removal between October 15 and April 1 of any given year, outside the active bat season to reduce impacts to bats.*

**Page 2 - Table 1 – Hazardous Waste – Build Alternative Mitigation Measures** – Added a reference to regulations. Table 1, eleventh row, third column, should read:

*No mitigation; however, should waste be encountered during construction, it will be disposed of in accordance with appropriate federal, state, and local regulations.*

**Page 31 – Threatened and Endangered Species – Identification** – Wording added to clarify the two separate USFWS field office regions. First indentation should read:

*United States Fish and Wildlife Service (USFWS) Information, Planning, and Conservation (IPaC) search engine was utilized to identify critical habitat that may occur on each site. The Proposed Action spans two USFWS field offices. Mint Hill Siding, Mint Hill Storage Yard and Warehouse, and Midland Siding are located in the USFWS Asheville Field Office region while the ACWR HQ Storage Yard and Samarcand Siding are located in the USFWS Raleigh Field Office region.*

**Page 31 – Federal Threatened and Endangered Species – Impacts Section** – Wording updated, changing the effect determination for the plant species and the NLEB based on a follow-up phone call with the USFWS Asheville Office. Impacts section, first and second paragraph should read:

*Based on the historic and current land use activities, the lack of documented populations, and lack of suitable habitat, FRA determined that there would be “no effect” on the Carolina Heelsplitter, Cape Fear Shiner, Atlantic Pigtoe, and the Red-cockaded Woodpecker.*

*FRA conducted species surveys for the Schweinitz’s Sunflower (see Figure 8), Michaux’s Sumac, and the Smooth Coneflower within the optimal survey window with no species detected. However, due to the presence of suitable habitat for these species within the Study Area as well as the low detectability*

*of these species, FRA determined that the Proposed Action “may affect, not likely to adversely affect” the Schweinitz’s Sunflower, Michaux’s Sumac, and the Smooth Coneflower.*

*Due to potential summer roosting habitat for the Northern Long-eared Bat, the determination of “may affect” is recommended and discussed in greater detail below.*

**Page 32 – Federal Threatened and Endangered Species – NLEB Section** – Wording updated, changing the effect determination for the plant species and the NLEB based on a follow-up phone call with the USFWS Asheville Office. NLEB Section, fourth paragraph, first sentence should read:

*A biological conclusion of “may affect” was recommended per the 4(d) rules.*

**Page 32 – Federal Threatened and Endangered Species – Mitigation Section** – Wording revised to reflect the wording in the USFWS Asheville Office concurrence letter dated September 8, 2022, related to conservation recommendations. Mitigation Section, first paragraph has been removed.

~~*NLEB mitigation in the form of tree cutting timing restriction is required at three sites including Mint Hill Siding, Mint Hill Storage Yard and Warehouse, and Midland Siding. Tree removal activities are prohibited from June 1 through July 31. ACWR will add this restriction to the construction sequence and restrain from tree cutting from June 1 through July 31.*~~

The following mitigation measure has been added:

*Based on the USFWS Asheville Office concurrence letter dated September 8, 2022, ACWR will conduct all tree removal between October 15 and April 1 of any given year, outside the active bat season to reduce impacts to bats.*

**Page 32 – Federal Threatened and Endangered Species – Mitigation Section** – Wording updated, changing the effect determination for the plant species and the NLEB based on a follow-up phone call with the USFWS Asheville Office. Mitigation Section, second paragraph should read:

*The Build Alternative would have “no effect” on the Carolina Heelsplitter, Cape Fear Shiner, Atlantic Pigtoe, and the Red-cockaded Woodpecker and therefore no mitigation is required for these species.*

*The Build Alternative may affect, not likely to adversely affect the Schweinitz’s Sunflower, Michaux’s Sumac, and the Smooth Coneflower. Through coordination with USFWS, FRA determined that no mitigation is required for these species because species surveys were conducted during the optimal survey window with negative survey results.*

**Page 35 – Hazardous Waste and Hazardous Material – Identification** – Paragraph added, providing additional information related to hazardous waste regulations and responsible federal and state agencies. Identification section, a new first paragraph should read:

*Hazardous waste can be generated from many different sources and can make an area or property dangerous or capable of having a harmful effect on human health or the environment. The use, storage, transportation, and disposal of contaminated and hazardous materials are regulated at the federal level by the EPA. The US Resource Conservation and Recovery Act (RCRA) of 1976 gives the*

*EPA the authority to regulate hazardous waste from the “cradle-to-grave.” The Comprehensive Environmental Resource Conservation and Liability Act of 1980 (CERCLA), commonly known as Superfund, created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. At the state level, North Carolina General Statutes Chapter 130A. Public Health Section 130A-310.10 governs the handling of hazardous waste and is enforced by NC DEQ.*

**Page 36 – Hazardous Waste and Hazardous Material – Impacts and Mitigation** – Additional citations related to regulations that would dictate contaminated material cleanup efforts. Impacts and Mitigation Section, second paragraph should read:

*Should contaminated materials be encountered, all materials will be disposed of properly and in accordance with all federal, state, and local regulations including, for example, 42 U.S.C. Chapter 103 - Comprehensive Environmental Response, Compensation, And Liability Act (CERCLA), 42 U.S.C. Chapter 82 Section 6901 Resource Conservation and Recovery Act (RCRA), and North Carolina General Statutes Chapter 130A. Public Health Section 130A-310.10.*

**Page 47 – Avoidance, Minimization, and Mitigation – Threatened and Endangered Species –** Mitigation measure revised based on USFWS Asheville concurrence letter. Third bolded item, Threatened and Endangered Species, should read:

*Based on the USFWS Asheville Office concurrence letter dated September 8, 2022, ACWR will conduct all tree removal between October 15 and April 1 of any given year, outside the active bat season, to reduce impacts to bats.*

**Page 47 – Avoidance, Minimization, and Mitigation – Air Quality** – Additional specification on types of dust suppression have been provided. Fifth bolded item, Air Quality, should read:

*During construction, the contractor shall implement dust control measures including use of water or dust suppressing chemicals to avoid unnecessary safety or health concerns.*

## 9.0 Environmental Commitments

During the design process, consideration was given to avoid impacts where possible while minimizing impacts where practicable. For those impacts that cannot be avoided, mitigation measures will be implemented. In some cases, mitigation is only a commitment to complete additional steps prior to or during construction. Mitigation commitments are the responsibility of ACWR. Below is a list of mitigation items required for the Proposed Action.

**Water Quality** – Due to ACWR HQ Storage Yard location within a Water Supply Watershed, land development will require a 30-foot buffer around any watercourse (low density), more stringent erosion and sediment controls, and implementation of BMPs. The ACWR HQ Storage Yard design also includes a 30-foot buffer around the wetlands on the site. In accordance with the National Pollution Discharge Elimination System (NPDES), ACWR will comply by incorporating temporary erosion and



sedimentation controls during construction to minimize the release of sediment into nearby water sources. Post-construction, permanent stormwater management systems will be in place at Mint Hill Storage Yard and ACWR HQ Storage Yard to comply with NPDES regulations for disturbance over ten (10) acres.

**Watercourses** – Avoidance and minimization efforts have been incorporated into the current design, including a 30-foot buffer around all regulated resources. Impacts have been minimized to the extent practicable.

The regional conditions for the USACE Nationwide Permit (NWP 39, NWP 14) stipulate that mitigation and pre-construction notification may be required for any activity resulting in the loss of more than 0.02 acre of stream bed. In final design, ACWR will conduct a Preliminary Jurisdictional Determination (PJD) with the USACE as well as determine minimization efforts; final impacts; mitigation requirements; and, if necessary, mitigation banking options. ACWR will be responsible for obtaining the necessary permits prior to construction. Permitting for the Proposed Action would include USACE Section 404 approval (NWP 14 linear feature, NWP 39 for storage yard, warehouse) and NC DEQ 401 Water Quality Certification approval. Permitting would take place during final design.

**Threatened and Endangered Species** – Based on the USFWS Asheville Office concurrence letter dated September 8, 2022, ACWR will conduct all tree removal between October 15 and April 1 of any given year, outside the active bat season, to reduce impacts to bats.

**Noise** – Best practices to minimize construction equipment noise require for regular and thorough maintenance procedures for all construction equipment. Replacement of failing or ineffective muffling and exhaust systems, periodic lubrication of moving parts, and properly tuned engines are necessary in order to keep construction equipment noise emissions to a minimum. Proper scheduling and implementation of duration limits for the noisiest construction events can reduce the severity of noise impacts during the construction phase.

**Air Quality** – During construction, the contractor shall implement dust-control measures, including the use of water or dust-suppressing chemicals, to avoid unnecessary safety or health concerns.

**Hazardous Waste** – Should contaminated materials be encountered, all materials will be disposed of properly and in accordance with all federal, state, and local regulations, including, for example, 42 U.S.C. Chapter 103 - CERCLA, 42 U.S.C. Chapter 82, Section 6901 RCRA, and North Carolina General Statutes Chapter 130A, Public Health Section 130A-310.10.

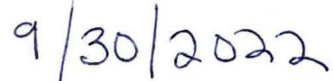
**Public Safety** – Construction documents will include requirements to coordinate with property owners prior to work taking place at the three private crossings within the Study Area.

## 10.0 Conclusion

FRA finds that the Preferred Alternative, as presented and assessed in the EA and this FONSI, satisfies the requirements of NEPA (42 U.S.C. § 4321 *et seq.*) and CEQ regulations (40 C.F.R. Parts 1500-1508), 23 C.F.R. Parts 771 and 774, and that the Proposed Action will not have a foreseeable significant impact on the quality of human or natural environment following the implementation of mitigation measures. The EA provides sufficient evidence and analysis for FRA to determine that an Environmental Impact Statement is not required for the Preferred Alternative as presented.



Marlys Osterhues  
Acting Director, Office of Environmental Program Management  
Office of Railroad Development  
Federal Railroad Administration



Date

# **Appendices**



**Appendix A**  
Environmental Assessment  
Notice of Availability

**Environmental Assessment  
Public Review of  
ACWR Congestion Mitigation Project**

Aberdeen Carolina & Western Railway (ACWR) is proposing to use Federal Railroad Administration (FRA) Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program and Railroad Rehabilitation and Improvement Funding (RRIF) to administer a congestion mitigation project (the Proposed Action). Due to the use of federal funds, the Proposed Action must comply with the National Environmental Policy Act (NEPA) of 1969. To document the Proposed Action and its effects on the natural, cultural, and social environment, FRA has prepared an Environmental Assessment (EA). The Proposed Action includes the construction of new facilities at five (5) locations. The five sites include three (3) storage and passing sidings, two (2) storage and switching yards, and one (1) warehouse. All construction activities would take place within existing ACWR railroad right-of-way or on land owned by ACWR.

The EA was prepared in accordance with the requirements of the National Environmental Policy Act and other federal laws including Section 404 of the Clean Water Act, Section 7 of the Endangered Species Act, Section 4(f) of the Department of Transportation Action, and Section 106 of the National Historic Preservation Act. The EA is now available for review and comment at <https://railroads.dot.gov/environment/environmental-reviews/aberdeen-carolina-and-western-railway-congestion-mitigation>.

Comments should be submitted by August 31, 2022 to Kevin Wright, FRA Environmental Specialist, at [kevin.wright@dot.gov](mailto:kevin.wright@dot.gov).



Beaufort Gazette  
 Belleville News-Democrat  
 Bellingham Herald  
 Bradenton Herald  
 Centre Daily Times  
 Charlotte Observer  
 Columbus Ledger-Enquirer  
 Fresno Bee

The Herald - Rock Hill  
 Herald Sun - Durham  
 Idaho Statesman  
 Island Packet  
 Kansas City Star  
 Lexington Herald-Leader  
 Merced Sun-Star  
 Miami Herald

el Nuevo Herald - Miami  
 Modesto Bee  
 Raleigh News & Observer  
 The Olympian  
 Sacramento Bee  
 Fort Worth Star-Telegram  
 The State - Columbia  
 Sun Herald - Biloxi

Sun News - Myrtle Beach  
 The News Tribune Tacoma  
 The Telegraph - Macon  
 San Luis Obispo Tribune  
 Tri-City Herald  
 Wichita Eagle

## AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
16797	298226	Print Legal Ad - IPL0083819		\$568.14	1	50 L

**Attention:** Jan Dickey  
 ABERDEEN CAROLINA & WESTERN RAILWAY  
 967 NC HWY 211 E  
 CANDOR, NC 27229

**Environmental Assessment  
 Public Review of  
 ACWR Congestion Mitigation  
 Project**

Aberdeen Carolina & Western Railway (ACWR) is proposing to use Federal Railroad Administration (FRA) Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program and Railroad Rehabilitation and Improvement Funding (RRIF) to administer a congestion mitigation project (the Proposed Action). Due to the use of federal funds, the Proposed Action must comply with the National Environmental Policy Act (NEPA) of 1969. To document the Proposed Action and its effects on the natural, cultural, and social environment, FRA has prepared an Environmental Assessment (EA). The Proposed Action includes the construction of new facilities at five (5) locations. The five sites include three (3) storage and passing sidings, two (2) storage and switching yards, and one (1) warehouse. All construction activities would take place within existing ACWR railroad right-of-way or on land owned by ACWR.

The EA was prepared in accordance with the requirements of the National Environmental Policy Act and other federal laws including Section 404 of the Clean Water Act, Section 7 of the Endangered Species Act, Section 4(f) of the Department of Transportation Action, and Section 106 of the National Historic Preservation Act. The EA is now available for review and comment at <https://railroads.dot.gov/environment/environmental-reviews/aberdien-carolina-and-western-railway-congestion-mitigation>. Comments should be submitted by August 31, 2022 to Kevin Wright, FRA Environmental Specialist, at [kevin.wright@dot.gov](mailto:kevin.wright@dot.gov).  
 IPL0083819  
 Aug 3 2022

**North Carolina } ss  
 Mecklenburg County }**

Before the undersigned, a Notary Public of said County and State, duly authorized to administer oaths affirmations, etc., personally appeared, being duly sworn or affirmed according to law, doth depose and say that he/she is a representative of The Charlotte Observer Publishing Company, a corporation organized and doing business under the laws of the State of Delaware, and publishing a newspaper known as The Charlotte Observer in the city of Charlotte, County of Mecklenburg, and State of North Carolina and that as such he/she is familiar with the books, records, files, and business of said Corporation and by reference to the files of said publication, the attached advertisement was inserted. The following is correctly copied from the books and files of the aforesaid Corporation and Publication.

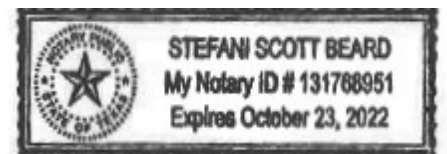
No. of Insertions: 1  
 Beginning Issue of: 08/03/2022  
 Ending Issue of: 08/03/2022

*Tara Pennington*

In Testimony Whereof I have hereunto set my hand and affixed my seal on the 3rd day of August, 2022

*Stefani Beard*

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.  
 Legal document please do not destroy!



**Bair, Laura C**

---

**From:** Bair, Laura C  
**Sent:** Friday, July 29, 2022 6:39 PM  
**To:** Bair, Laura C  
**Subject:** Notice of Availability - ACWR Congestion Mitigation Project - Environmental Assessment

On behalf of the Federal Railroad Administration (FRA), the following Notice of Availability for the ACWR Congestion Mitigation Project Environmental Assessment is below. All comments should be directed to Kevin Wright FRA Environmental Specialist, at [kevin.wright@dot.gov](mailto:kevin.wright@dot.gov). Thank you.

**Environmental Assessment  
Public Review of  
ACWR Congestion Mitigation Project**

Aberdeen Carolina & Western Railway (ACWR) is proposing to use Federal Railroad Administration (FRA) Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program and Railroad Rehabilitation and Improvement Funding (RRIF) to administer a congestion mitigation project (the Proposed Action). Due to the use of federal funds, the Proposed Action must comply with the National Environmental Policy Act (NEPA) of 1969. To document the Proposed Action and its effects on the natural, cultural, and social environment, FRA has prepared an Environmental Assessment (EA). The Proposed Action includes the construction of new facilities at five (5) locations. The five sites include three (3) storage and passing sidings, two (2) storage and switching yards, and one (1) warehouse. All construction activities would take place within existing ACWR railroad right-of-way or on land owned by ACWR.

The EA was prepared in accordance with the requirements of the National Environmental Policy Act and other federal laws including Section 404 of the Clean Water Act, Section 7 of the Endangered Species Act, Section 4(f) of the Department of Transportation Action, and Section 106 of the National Historic Preservation Act. The EA is now available for review and comment at <https://railroads.dot.gov/environment/environmental-reviews/abern-deen-carolina-and-western-railway-congestion-mitigation>. Comments should be submitted by August 31, 2022 to Kevin Wright, FRA Environmental Specialist, at [kevin.wright@dot.gov](mailto:kevin.wright@dot.gov).

**Laura Bair**

Senior Project Manager | NEPA

**Skelly and Loy, Inc., A Terracon Company**

449 Eisenhower Boulevard, Suite 300 | Harrisburg, PA 17111

D (717) 510 7711 | C (717) 514 9471

[lbair@skellyloy.com](mailto:lbair@skellyloy.com) | [skellyloy.com](http://skellyloy.com) | [terracon.com](http://terracon.com)

**SKELLY AND LOY**

A  Terracon Company

## EA Public Notice of Availability – email distribution list

Federal, State, and Local agencies that received the email notice sent July 29, 2022.

Agency	
<b>Federal</b>	U.S. Army Corps of Engineers (USACE) U.S. Fish and Wildlife Service (USFWS) U.S. Environmental Protection Agency (USEPA) National Oceanic and Atmospheric Administration (NOAA) Federal Emergency Management Agency (FEMA) Region IV National Park Service (NPS) U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Catawba Tribe Cherokee Tribe
<b>State</b>	North Carolina Department of Natural and Cultural Resources (NC DNCR) North Carolina Department of Transportation (NCDOT) North Carolina State Historic Preservation Office (SHPO) North Carolina Natural Heritage Program North Carolina Department of Environmental Quality (DEQ)
<b>Local</b>	Charlotte-Mecklenburg Historic Landmarks Commission Mecklenburg County Cabarrus County Montgomery County Moore County Planning and Transportation Director

**Appendix B**  
Environmental Assessment  
Comments and Responses



## Agency Comments and Responses

Comments were received from four (4) agencies (two separate USFWS field offices). Responses to the comments are provided below. Original copies of agency letters or emails are provided following the comments and responses.

**Scott Jones, Chief  
Asheville and Charlotte Regulatory Field Offices  
USACE – Wilmington District**

### Comment

You requested an evaluation of environmental considerations to jurisdictional waters of the United States (WoUS) that could involve Department of Army (DA) permitting for the above-mentioned project. Under Section 404 of the Clean Water Act (CWA), DA authority regulates discharge of dredge or fill material into WoUS. This evaluation is not a jurisdictional determination of WoUS located in the project area(s).

The Corps' evaluation is based upon review of the documents submitted by the Federal Railroad Administration, available aerial photos, USGS topographic maps, and the Corps' project database. Far Branch, unnamed tributaries, and abutting wetlands are known to be located in the proposed project area. These features are potential WoUS and could be DA jurisdictional features under section 404 of the CWA. No request for a jurisdictional determination of WoUS at the site has been submitted to the Corps. Therefore, the limits and extent of jurisdictional WoUS at the site has not been defined. If activities at the site will involve placement of fill material into WoUS, then DA authorization will be required prior to starting the proposed activities.

Please note, the information submitted did not provide detailed data or other information necessary to verify the size and type of impacts to jurisdictional waters present within the project corridors/areas. The type of DA authorization required (i.e., general or individual permit) will be determined by the location, type, and extent of jurisdictional areas impacted by the work, and by the project design and construction limits.

### Response

Thank you for your comments. As the project moves into final design and permitting, coordination with the USACE will continue, including a request for a jurisdictional determination should WoUS be impacted by the project design and construction limits.

**Laurie F. Muzzy  
USDA-Natural Resources Conservation Service**

### Comment

If this email is a request for a Farmland Protection Policy Act review from the Natural Resources Conservation Service, please see the attached document for FPPA procedures. And let me know if you or your colleagues have any questions. Thank you!

### Response

FRA has completed FPPA coordination for this project as noted in EA Section 4.2.3 Farmland Resources and Appendix B – USDA NRCS Coordination. Thank you for your comment.

## Comment

### Mint Hill Siding & Mint Hill Warehouse (Mecklenburg County)

If suitable habitat is present on site and surveys, conducted within the optimal survey window, do not detect the species, we recommend an effect determination of NLAA for species with low detectability. For this project, this would apply to Schweinitz's sunflower, Michaux's sumac, and smooth coneflower.

You used the 4d rule for NLEB. On March 23, 2022, the Service published a proposal to reclassify the northern long-eared bat as endangered under the Act. The U.S. District Court for the District of Columbia has ordered the Service to complete a new final listing determination for the northern long-eared bat by November 2022 (Case 1:15-cv-00477, March 1, 2021). The bat, currently listed as threatened, faces extinction due to the range-wide impacts of white-nose syndrome, a deadly fungal disease affecting cave-dwelling bats across the continent. The proposed reclassification, if finalized, would remove the current 4(d) rule for the northern long-eared bat, as these rules may be applied only to threatened species. Depending on the type of effects a project has on northern long-eared bats, the change in the species' status may trigger the need to re-initiate consultation for any actions that are not completed and for which the Federal action agency retains discretion once the new listing determination becomes effective (anticipated to occur by December 30, 2022). If your project may result in incidental take of northern long-eared bat after the new listing goes into effect this will first need to be addressed in an updated consultation that includes an incidental take statement. If your project may require re-initiation of consultation, please contact our office for additional guidance.

### Midland Siding (Cabarras County)

If suitable habitat is present on site and surveys, conducted within the optimal survey window, do not detect the species, we recommend an effect determination of NLAA for species with low detectability. For this project, this would apply to Schweinitz's sunflower.

You used the 4d rule for NLEB. See notes under Mint Hill sites.

### Comments on the EA

#### Page 31:

"Based on the historic and current land use activities, the lack of documented populations, and the lack of suitable habitat observed during the field investigations, FRA determined that there would be "no effect" on the Schweinitz's Sunflower (see Figure 8), Carolina Heelsplitter, Michaux's Sumac, Smooth Coneflower, Cape Fear Shiner, Atlantic Pigtoe, and the Red-cockaded Woodpecker."

This sentence is misleading. Suitable habitat is present for the 3 plants but not the mussels. I would break this into at least 2 sentences.

## **Pg 31/32 NLEB Discussion:**

"A biological conclusion of "may affect, not likely to adversely affect", was recommended per the 4(d) rules." The 4d PBO does not distinguish between NLAA and LAA determinations so this appears to be inaccurate. Presumably FRA made the recommendation, not the 4d rule.

The materials in Appendix D do not support the NLAA conclusion these paragraphs use. If you did conclude NLAA, you wouldn't have needed the 4d rule and you would have needed to send your package to the Raleigh ES FO per their self-certification letter, which does not appear to have been done. Plus, 3 of the sites are not in the Raleigh ES FO work area so that process wouldn't apply. If you are clearing trees during the bat active season and IPAC identifies NLEB as within your consultation area, you need to show the species isn't present to conclude NLAA. The materials in the EA do not show this.

You can just change the two paragraphs to a "may affect" conclusion only and keep using the 4d PBO. If you do this, I recommend adding a portion of the language above about the uplisting decision for NLEB and the potential need to re-initiate. If you stick with this approach, you may need to re-initiate so look for guidance from the Service in the Fall and check IPAC for NLEB range updates.

### **Response**

A conference call was held with the USFWS Asheville Office on August 26, 2022 to discuss these comments. The following items were discussed, agreed upon, and submitted to the USFWS Asheville Office for concurrence on August 30, 2022.

#### Plants

As discussed, the effect determinations for the plants (Smooth Coneflower, Michaux's Sumac, Schweinitz's Sunflower) have been updated from "no effect" to "may affect, not likely to adversely affect". Based on USFWS Asheville concurrence letter dated September 8, 2022, this change will not require mitigation due to the optimal survey window negative survey results.

#### NLEB

As discussed, the effect determination was changed from "may affect, not likely to adversely affect" to "may affect" relying on the 4d rule. According to the USFWS Asheville concurrence letter dated September 8, 2022:

"There is suitable habitat in the three action areas for the northern long-eared bat. Based on the following, we believe the effects of the project on northern long-eared bat (*Myotis septentrionalis*) would be discountable and would concur with a determination that the project may affect but is NLAA the northern long-eared bat: 1) there are no known records of northern long-eared bat in Mecklenburg or Cabarrus Counties and the nearest known occurrence is 60 miles from the nearest action area, 2) the action area is outside the current range of the species, 3) northern long-eared bats have never been detected in the western portion of the Piedmont ecoregion in North Carolina, and 4) Mecklenburg and Cabarrus County do not adjoin a county with a known occurrence record for the species. Your concurrence request and the Environmental Assessment prepared for this project use the final 4(d) rule for the northern long-eared bat and make a conclusion of "may affect" per the U.S. Fish and Wildlife Service's (Service) 2016 Programmatic Biological Opinion for the Final 4(d) Rule. As we have provided concurrence with a NLAA determination above, section 7 consultation would not need to be reinitiated if the proposed rule to uplist the northern long-eared bat becomes final and the 4(d) rule no longer applies."

The USFWS Asheville Office concurrence letter is provided in this appendix.

*A field evaluation was conducted on September 29 and October 4, 2021 by Terracon biologists JC Weaver, Conner Miller, and Chaz Ganey to identify potentially suitable habitat for federally threatened and endangered species protected by the Endangered Species Act (ESA). The following findings have been made or revised for the three sites in the Asheville Field Office region – Mint Hill Siding, Mint Hill Storage Yard and Warehouse and Midland Siding.*

Species	Conclusion	Determination	Documentation
Northern Long Eared Bat	Suitable summer habitat	May affect	Relying upon the findings of the 1/5/2016 Programmatic Biological Opinion for Final 4(d) Rule on the Northern Long-Eared Bat and Activities Exempted from Take Prohibitions to fulfill project-specific section 7 responsibilities.
Carolina Heelsplitter	No suitable habitat present	No effect	Habitat assessment by Terracon biologists found no suitable habitat.
Atlantic Pigtoe	No suitable habitat present	No effect	Habitat assessment by Terracon biologists found no suitable habitat.
Smooth Coneflower	Suitable habitat present	May affect, not likely to adversely affect	Species-specific survey (within species survey window) by Terracon biologists did not observe the species or evidence of the species.
Michaux's Sumac	Suitable habitat present	May affect, not likely to adversely affect	Species-specific survey (within species survey window) by Terracon biologists did not observe the species or evidence of the species.
Schweinitz's Sunflower	Suitable habitat present	May affect, not likely to adversely affect	Species-specific survey (within species survey window) by Terracon biologists did not observe the species or evidence of the species.

**Kathryn Matthews**  
USFWS, Raleigh Field Office

**Comment**

The Raleigh Field Office concurs with your species determinations for the two sites in our office work area. Thank you for using our online project review and self-certification process. If the NLEB is reclassified as endangered, no further action will be needed for the sites in Montgomery or Moore Counties, since neither county is within the known range of the species.

**Response**

Thank you for your concurrence.



### **Comment**

Thank you for your notice of July 29, 2022, concerning the above-referenced undertaking. We have reviewed the submittal and offer the following comments.

We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or [environmental.review@ncdcr.gov](mailto:environmental.review@ncdcr.gov). In all future communication concerning this project, please cite the above referenced tracking number.

### **Response**

Thank you for your concurrence.



**DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
151 PATTON AVENUE  
ROOM 208  
ASHEVILLE, NORTH CAROLINA 28801-5006**

August 2, 2022

**SUBJECT: Aberdeen Carolina and Western Railway Congestion Mitigation Project –  
Mecklenburg, Cabarrus, Montgomery, and Moore Counties, North Carolina  
(SAW-2022-01665)**

Mr. Kevin Wright  
Environmental Protection Specialist  
Federal Railroad Administration  
1200 New Jersey Avenue Southeast  
Washington, DC 20590

Dear Mr. Wright,

Reference is made to your email and attachments of July 29, 2022, for conductance of an environmental review pursuant to use Federal Railroad Administration (FRA) Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program and Railroad Rehabilitation and Improvement Funding (RRIF) to administer a congestion mitigation project known as the Aberdeen Carolina and Western Railway (ACWR) Congestion Mitigation Project. The project location consists of five separate sites along an existing 140-mile railroad right-of-way owned by AWCR in Mecklenburg, Cabarrus, Montgomery, and Moore Counties, North Carolina.

You requested an evaluation of environmental considerations to jurisdictional waters of the United States (WoUS) that could involve Department of Army (DA) permitting for the above-mentioned project. Under Section 404 of the Clean Water Act (CWA), DA authority regulates discharge of dredge or fill material into WoUS. This evaluation is not a jurisdictional determination of WoUS located in the project area(s).

The Corps' evaluation is based upon review of the documents submitted by the Federal Railroad Administration, available aerial photos, USGS topographic maps, and the Corps' project database. Far Branch, unnamed tributaries, and abutting wetlands are known to be located in the proposed project area. These features are potential WoUS and could be DA jurisdictional features under section 404 of the CWA. No request for a jurisdictional determination of WoUS at the site has been submitted to the Corps. Therefore, the limits and extent of jurisdictional WoUS at the site has not been defined. If activities at the site will involve placement of fill material into WoUS, then DA authorization will be required prior to starting the proposed activities.

Please note, the information submitted did not provide detailed data or other information necessary to verify the size and type of impacts to jurisdictional waters present within the project corridors/areas. The type of DA authorization required (i.e., general or individual permit) will be determined by the location, type, and extent of jurisdictional areas impacted by the work, and by the project design and construction limits.

Should you have any further questions related to this matter, please contact me at 828-271-7980, extension 4222.

Sincerely,

M. Scott Jones, PWS  
Chief, Asheville Regulatory Field Office

cc:

Laura Bair  
Senior Project Manager  
Skelly and Loy, Incorporated  
A Terracon Company  
449 Eisenhower Boulevard, Suite 300  
Harrisburg, Pennsylvania 17111  
[lbair@skellyloy.com](mailto:lbair@skellyloy.com)

## Bair, Laura C

---

**From:** Muzzy, Laura - FPAC-NRCS, RALEIGH, NC <Laura.Muzzy@usda.gov>  
**Sent:** Wednesday, August 3, 2022 7:26 AM  
**To:** Bair, Laura C  
**Subject:** RE: [External Email]Notice of Availability - ACWR Congestion Mitigation Project - Environmental Assessment  
**Attachments:** FPPA Procedure for Applicants NRCS-NC.pdf

Hello, Laura,

If this email is a request for a Farmland Protection Policy Act review from the Natural Resources Conservation Service, please see the attached document for FPPA procedures. And let me know if you or your colleagues have any questions.

Thank you!

best,

### Laurie F. Muzzy

Resource Soil Scientist | USDA-Natural Resources Conservation Service  
(919) 873-2158  
4407 Bland Road, suite #117  
Raleigh, NC 27609

---

**From:** Bair, Laura C <lhair@skellyloy.com>  
**Sent:** Friday, July 29, 2022 6:39 PM  
**To:** Bair, Laura C <lhair@skellyloy.com>  
**Subject:** [External Email]Notice of Availability - ACWR Congestion Mitigation Project - Environmental Assessment

#### [External Email]

If this message comes from an **unexpected sender** or references a **vague/unexpected topic**;  
Use caution before clicking links or opening attachments.  
Please send any concerns or suspicious messages to: [Spam.Abuse@usda.gov](mailto:Spam.Abuse@usda.gov)

On behalf of the Federal Railroad Administration (FRA), the following Notice of Availability for the ACWR Congestion Mitigation Project Environmental Assessment is below. All comments should be directed to Kevin Wright FRA Environmental Specialist, at [kevin.wright@dot.gov](mailto:kevin.wright@dot.gov). Thank you.

### Environmental Assessment Public Review of ACWR Congestion Mitigation Project

Aberdeen Carolina & Western Railway (ACWR) is proposing to use Federal Railroad Administration (FRA) Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program and Railroad Rehabilitation and Improvement Funding (RRIF) to administer a congestion mitigation project (the Proposed Action). Due to the use of federal funds, the Proposed Action must comply with the National Environmental Policy Act (NEPA) of 1969. To document the Proposed Action and its effects on the natural, cultural, and social environment, FRA has prepared an Environmental Assessment (EA). The Proposed Action includes the construction of new facilities at five (5) locations. The five sites include three (3) storage and passing sidings, two (2) storage and switching yards, and one (1) warehouse. All construction activities would take place within existing ACWR railroad right-of-way or on land owned by ACWR.



The EA was prepared in accordance with the requirements of the National Environmental Policy Act and other federal laws including Section 404 of the Clean Water Act, Section 7 of the Endangered Species Act, Section 4(f) of the Department of Transportation Action, and Section 106 of the National Historic Preservation Act. The EA is now available for review and comment at <https://railroads.dot.gov/environment/environmental-reviews/aberdeen-carolina-and-western-railway-congestion-mitigation>. Comments should be submitted by August 31, 2022 to Kevin Wright, FRA Environmental Specialist, at [kevin.wright@dot.gov](mailto:kevin.wright@dot.gov).

**Laura Bair**

Senior Project Manager | NEPA

**Skelly and Loy, Inc., A Terracon Company**

449 Eisenhower Boulevard, Suite 300 | Harrisburg, PA 17111

D (717) 510 7711 | C (717) 514 9471

[lbair@skellyloy.com](mailto:lbair@skellyloy.com) | [skellyloy.com](http://skellyloy.com) | [terracon.com](http://terracon.com)

**SKELLY AND LOY**

A  Terracon Company

Terracon provides environmental, facilities, geotechnical, and materials consulting engineering services delivered with responsiveness, resourcefulness, and reliability.

---

*Private and confidential as detailed here ([www.terracon.com/disclaimer](http://www.terracon.com/disclaimer)). If you cannot access the hyperlink, please e-mail sender.*

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

## Bair, Laura C

---

**From:** Wright, Kevin (FRA) <kevin.wright@dot.gov>  
**Sent:** Tuesday, August 16, 2022 11:39 AM  
**To:** Bair, Laura C  
**Subject:** Fwd: [EXTERNAL] Notice of Availability - ACWR Congestion Mitigation Project - Environmental Assessment  
**Attachments:** \_22-204\_Scoping\_FRA\_Aberdeen, Carolina & Western RailRoad Development EA.pdf

Kevin A. Wright  
Environmental Protection Specialist  
Federal Railroad Administration  
202-868-2628

---

**From:** Wilson, Lauren B <lauren\_wilson@fws.gov>  
**Sent:** Tuesday, August 16, 2022 8:39:55 AM  
**To:** Wright, Kevin (FRA) <kevin.wright@dot.gov>  
**Cc:** Matthews, Kathryn H <kathryn\_matthews@fws.gov>  
**Subject:** Fw: [EXTERNAL] Notice of Availability - ACWR Congestion Mitigation Project - Environmental Assessment

**CAUTION:** This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Kevin - I reviewed the EA and Appendix D as requested in Laura Blair's email below. Myself and Kathryn Matthews, cc'd, in the Raleigh Office, reviewed this project in December 2021 when we sent a scoping letter to Andrea Martin (attached for convenience).

The five sites in the EA overlap both the U.S. Fish and Wildlife Service Asheville (3 sites) and Raleigh (2 sites) Ecological Services Fields Offices. When this happens, FRA is free to complete coordination and section 7 consultation typically with just one office and then we, in turn, coordinate with each other on a response. In this case, based on how you completed the section 7 consultation, that coordination between Raleigh and Asheville did not occur. I did forward your original request to Kathy Matthews in Raleigh. You'll hear from her separately.

Appendix D shows that FRA followed consultation processes only applicable to the Raleigh ES FO. That being said, if FRA concludes No Effect, no further section 7 coordination is required. Below are some notes for each of the three sites in my work area.

I do recommend that all future FRA projects that *may affect* the NLEB use the National FHWA/FRA/FTA PBO. Information on that consultation pathway can be found here: <https://www.fws.gov/program/endangered-species/bat-consultation-conservation-strategy>.

Feel free to call to discuss. I know some of this is confusing. lbw

### Mint Hill Siding & Mint Hill Warehouse (Mecklenburg County) -

- If suitable habitat is present on site and surveys, conducted within the optimal survey window, do not detect the species, we recommend an effect determination of NLAA for species with low detectability. For this project, this would apply to Schweinitz's sunflower, Michaux's sumac, and smooth coneflower.

- You used the 4d rule for NLEB. On March 23, 2022, the Service published a proposal to reclassify the northern long-eared bat as endangered under the Act. The U.S. District Court for the District of Columbia has ordered the Service to complete a new final listing determination for the northern long-eared bat by November 2022 (Case 1:15-cv-00477, March 1, 2021). The bat, currently listed as threatened, faces extinction due to the range-wide impacts of white-nose syndrome, a deadly fungal disease affecting cave-dwelling bats across the continent. The proposed reclassification, if finalized, would remove the current 4(d) rule for the northern long-eared bat, as these rules may be applied only to threatened species. Depending on the type of effects a project has on northern long-eared bats, the change in the species' status may trigger the need to re-initiate consultation for any actions that are not completed and for which the Federal action agency retains discretion once the new listing determination becomes effective (anticipated to occur by December 30, 2022). If your project may result in incidental take of northern long-eared bat after the new listing goes into effect this will first need to be addressed in an updated consultation that includes an incidental take statement. If your project may require re-initiation of consultation, please contact our office for additional guidance.

### **Midland Siding (Cabarrus County) -**

- If suitable habitat is present on site and surveys, conducted within the optimal survey window, do not detect the species, we recommend an effect determination of NLAA for species with low detectability. For this project, this would apply to Schweinitz's sunflower.
- You used the 4d rule for NLEB. See notes under Mint Hill sites.

### **Comments on the EA -**

1. Page 31: *"Based on the historic and current land use activities, the lack of documented populations, and the lack of suitable habitat observed during the field investigations, FRA determined that there would be "no effect" on the Schweinitz's Sunflower (see Figure 8), Carolina Heelsplitter, Michaux's Sumac, Smooth Coneflower, Cape Fear Shiner, Atlantic Pigtoe, and the Red-cockaded Woodpecker."*
  - a. This sentence is misleading. Suitable habitat is present for the 3 plants but not the mussels. I would break this into at least 2 sentences.
2. Pg 31/32 NLEB Discussion:
  - a. *"A biological conclusion of "may affect, not likely to adversely affect", was recommended per the 4(d) rules."* The 4d PBO does not distinguish between NLAA and LAA determinations so this appears to be inaccurate. Presumably FRA made the recommendation, not the 4d rule.
  - b. The materials in Appendix D do not support the NLAA conclusion these paragraphs use. If you did conclude NLAA, you wouldn't have needed the 4d rule and you would have needed to send your package to the Raleigh ES FO per their self-certification letter, which does not appear to have been done. Plus, 3 of the sites are not in the Raleigh ES FO work area so that process wouldn't apply. If you are clearing trees during the bat active season and IPAC identifies NLEB as within your consultation area, you need to show the species isn't present to conclude NLAA. The materials in the EA do not show this.
  - c. You can just change the two paragraphs to a "may affect" conclusion only and keep using the 4d PBO. If you do this, I recommend adding a portion of the language above about the uplisting decision for NLEB and the potential need to re-initiate. If you stick with this approach, you may need to re-initiate so look for guidance from the Service in the Fall and check IPAC for NLEB range updates.

### **Lauren B. Wilson**

Section 7 Biologist, NCDOT Liaison, ARM, CWB®  
 U.S. Fish and Wildlife Service Asheville Ecological Services Field Office  
 160 Zillicoa Street, Asheville, North Carolina 28801  
 lauren\_wilson@fws.gov  
 828.275.8525  
 (she/her) (*Why pronouns matter*)



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Asheville Field Office  
160 Zillicoa Street Suite B  
Asheville, North Carolina 28801

September 08, 2022

Kevin A. Wright  
Environmental Protection Specialist  
Federal Railroad Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Subject: Informal Consultation for Aberdeen, Carolina & Western Railroad Development in Mecklenburg and Cabarrus Counties (FWS Log No. 22-204)

Dear Kevin A. Wright:

On August 30, 2022, we received (via e-mail) your request for informal consultation and section 7 concurrence on effects the subject project may have on federally listed species within the Asheville Ecological Services Field Office (ESFO) work area. We have reviewed the information you submitted along with a scoping letter we sent on December 13, 2021, and notes from a phone call with you on August 26, 2022, and the following is provided in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA) and section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 - 1543) (Act).

### **Project Description**

According to the information provided, the Federal Railroad Administration (FRA) is providing financial assistance to Aberdeen, Carolina & Western Railway (ACWR) to construct passing and storage sidings, storage yards, and a new warehouse to address congestion issues on the existing railroad in Mecklenburg, Cabarrus, Montgomery, and Moore Counties. The project includes construction in five locations between Mint Hill and Samarcand, North Carolina. Only three locations (below) are within the Asheville ESFO work area and are the subject of this concurrence letter. The Raleigh ESFO concurred with FRA's species determinations for the other two sites separately in an e-mail dated August 26, 2022.

*Mint Hill Siding* – Work will be completed along the existing rail line within the 200-foot right-of-way which has a cleared zone of approximately 50 feet. Tree clearing and ground disturbance will be necessary on forested lands.

*Mint Hill Storage Yard and Warehouse* – Construction will include new storage track spurs, a warehouse, and impervious surfaces within a 66-acre property. Tree clearing and ground disturbance will be necessary. The project location includes undeveloped, forested land with known wetlands.

*Midland Siding* – Work will be completed along the existing rail line within the existing right-of-way that extends up to about 200 feet. Tree clearing and ground disturbance will be necessary. Work includes the extension of an existing culvert for Far Branch and 2:1 slope construction.



### **Federally Listed Species**

Your concurrence request provides a recent and complete list of species that may occur within the three action areas per our Information for Planning and Consultation website and an effect determination for each species.

The information provided states that suitable habitat for Schweinitz's sunflower (*Helianthus schweinitzii*), smooth coneflower (*Echinacea laevigata*), and Michaux's sumac (*Rhus michauxii*) is present in the action area; however, Terracon biologists did not observe the species during surveys within the optimal survey windows. Based on negative results of visual surveys, we concur with the FRA that the project may affect but is not likely to adversely affect (NLAA) Schweinitz's sunflower, smooth coneflower, or Michaux's sumac. Based on negative survey results, we do not recommend mitigation for these species.

There is suitable habitat in the three action areas for the northern long-eared bat. Based on the following, we believe the effects of the project on northern long-eared bat (*Myotis septentrionalis*) would be discountable and would concur with a determination that the project may affect but is NLAA the northern long-eared bat: 1) there are no known records of northern long-eared bat in Mecklenburg or Cabarrus Counties and the nearest known occurrence is 60 miles from the nearest action area, 2) the action area is outside the current range of the species, 3) northern long-eared bats have never been detected in the western portion of the Piedmont ecoregion in North Carolina, and 4) Mecklenburg and Cabarrus County do not adjoin a county with a known occurrence record for the species. Your concurrence request and the Environmental Assessment prepared for this project use the final 4(d) rule for the northern long-eared bat and make a conclusion of "may affect" per the U.S. Fish and Wildlife Service's (Service) 2016 Programmatic Biological Opinion for the Final 4(d) Rule. As we have provided concurrence with a NLAA determination above, section 7 consultation would not need to be reinitiated if the proposed rule to uplist the northern long-eared bat becomes final and the 4(d) rule no longer applies.

Tricolored bat (*Perimyotis subflavus*) and little brown bat (*Myotis lucifugus*) are at-risk species and monarch butterfly (*Danaus plexippus*) is a candidate species. These species may occur in Mecklenburg and/or Cabarrus County. At-risk and candidate species are not legally protected under the Act and are not subject to any of its provisions, including section 7, unless they are formally proposed or listed as endangered or threatened. The Service is expected to make a listing determination on these species in the near future. While lead federal agencies are not prohibited from jeopardizing the continued existence of an at-risk, candidate, or proposed species unless the species becomes listed, the prohibition against jeopardy and taking a listed species under section 9 of the Act applies as soon as a listing becomes effective, regardless of the stage of completion of the proposed action. We include this notification to make you aware of these species' current status and potential occurrence within the action area.

### **Conservation Recommendations**

Section 7(a)(1) of the Act directs federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

- Remove trees between October 15 and April 1 of any given year, outside the bat active season to reduce impacts to bats. If this is not possible, we encourage avoidance of the maternity season (May 15 – August 15), and/or spring migration period (April 1 to May 15), and/or fall migration period (August 15 – October 15).

For the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

**Reinitiation Notice**

We believe the requirements under section 7 of the Act are fulfilled for the federally listed species discussed above. However, obligations under section 7 must be reconsidered if: (1) new information reveals impacts of this proposed action may affect listed species or critical habitat in a manner not previously considered, (2) this proposed action is subsequently modified in a manner that was not considered in this review, or (3) a new species is listed, or critical habitat is determined that may be affected by the proposed action.

We appreciate the opportunity to provide these comments. Please contact Ms. Lauren B. Wilson of our staff at [lauren\\_wilson@fws.gov](mailto:lauren_wilson@fws.gov) if you have any questions. In any future correspondence concerning this project, please reference our Log Number 22-204.

Sincerely,

*-- original signed --*

Janet Mizzi  
Field Supervisor

## Bair, Laura C

---

**From:** Matthews, Kathryn H <kathryn\_matthews@fws.gov>  
**Sent:** Friday, August 26, 2022 1:09 PM  
**To:** Wright, Kevin (FRA); Wilson, Lauren B  
**Cc:** Bair, Laura C  
**Subject:** Re: [EXTERNAL] Notice of Availability - ACWR Congestion Mitigation Project - Environmental Assessment

Hi Kevin,

The Raleigh Field Office concurs with your species determinations for the two sites in our office work area. Thank you for using our online project review and self-certification process. If the NLEB is reclassified as endangered, no further action will be needed for the sites in Montgomery or Moore Counties, since neither county is within the known range of the species.

Have a good weekend,

*Please note that I am teleworking Wednesday through Friday, every week. Email is the best way to reach me. Thanks,*

Kathy Matthews  
NC Renewable Energy Coordinator &  
Fish and Wildlife Biologist  
U.S. Fish and Wildlife Service  
551-F Pylon Drive  
Raleigh, NC 27606  
919-856-4520, x. 27

---

**From:** Wright, Kevin (FRA) <kevin.wright@dot.gov>  
**Sent:** Friday, August 26, 2022 10:23 AM  
**To:** Wilson, Lauren B <lauren\_wilson@fws.gov>  
**Cc:** Matthews, Kathryn H <kathryn\_matthews@fws.gov>; Bair, Laura C <lbair@skellyloy.com>  
**Subject:** RE: [EXTERNAL] Notice of Availability - ACWR Congestion Mitigation Project - Environmental Assessment

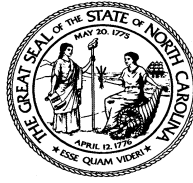
Hi Kathryn,

Just wanted to follow up on Lauren's email below and see if you had a chance to take a look at the EA? Happy to set up a meeting if there is anything you'd like to discuss.

Thanks,

Kevin

Kevin A. Wright  
Environmental Protection Specialist  
Federal Railroad Administration  
202-868-2628



**North Carolina Department of Natural and Cultural Resources  
State Historic Preservation Office**

Ramona M. Bartos, Administrator

Governor Roy Cooper  
Secretary D. Reid Wilson

Office of Archives and History  
Deputy Secretary, Darin J. Waters, Ph.D.

August 29, 2022

Kevin Wright  
Federal Railroad Administration

[kevin.wright@dot.gov](mailto:kevin.wright@dot.gov)

Re: New siding and storage yard construction along the Aberdeen Carolina & Western Railway, multiple locations identified using coordinates, Multiple Counties, ER 20-1193

Dear Mr. Wright:

Thank you for your notice of July 29, 2022, concerning the above-referenced undertaking. We have reviewed the submittal and offer the following comments.

We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or [environmental.review@ncdcr.gov](mailto:environmental.review@ncdcr.gov). In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,

A handwritten signature in blue ink that reads "Renee Gledhill-Earley".

*for* Ramona Bartos, Deputy  
State Historic Preservation Officer