

**MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL RAILROAD ADMINISTRATION,
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION RAIL DIVISION,
AND
THE NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER
FOR
PROPOSED SOUTHEAST HIGH-SPEED PASSENGER RAIL PROJECT SEGMENT
FROM THE VIRGINIA-NORTH CAROLINA STATE LINE
TO RALEIGH, NORTH CAROLINA
NCDOT TIP PROJECT No. P-3819
FEDERAL AID PROJECT No. FR-HSR-0057-11-01-00**

WHEREAS, the Federal Railroad Administration (FRA) proposes to provide financial assistance to construct the infrastructure to support high-speed passenger rail service in the travel corridor from Washington, District of Columbia, through Richmond, Virginia, including the Hampton Roads, Virginia region, and Raleigh, North Carolina, to Charlotte, North Carolina, collectively referred to as the Southeast High-Speed Rail (SEHSR) project with construction by the North Carolina Department of Transportation Rail Division (NCDOT-Rail), and the Virginia Department of Rail and Public Transportation (DRPT); and

WHEREAS, the FRA developed a Programmatic Agreement (Agreement) pursuant to 36 CFR Part 800.14(b), regulations implementing Section 106 of the National Historic Preservation Act (54 USC 300101 et seq.), to provide a consistent process for considering the effects of each portion of the SEHSR project on historic properties and resolving adverse effects where appropriate; and

WHEREAS, the Agreement was signed by FRA, North Carolina State Historic Preservation Officer (NC SHPO), Advisory Council on Historic Preservation (Council), NCDOT-Rail, DRPT, and the Virginia State Historic Preservation Office in April 2016; and

WHEREAS, the FRA and NC SHPO have agreed that the improvements and upgrades required for that portion of the SEHSR project from the Virginia-North Carolina State line to Raleigh (the Undertaking) will have effects upon historic properties listed on or determined eligible for listing on the National Register of Historic Places (NRHP) (historic properties); and

WHEREAS, the FRA notified the Council of the potential for adverse effects for this portion of the SEHSR Project pursuant to 36 CFR Part 800.6, and the Council declined to formally participate in the development of this Memorandum of Agreement (MOA); and

WHEREAS, the FRA and NCDOT-Rail have shared information about the SEHSR Project with the public multiple times via the NEPA process and NCDOT-Rail and the State Historic Preservation Office have conducted public outreach with towns, communities, and directly affected property owners to discuss and consider their views concerning design and construction options adjacent to or within historic properties or districts and solicit other consulting parties; and

WHEREAS, the NCDOT-Rail has participated in the identification of the historic properties and assessment of effects and with FRA will be responsible for implementing minimization and/or mitigation measures, and has been invited by the FRA, and NC SHPO to be a signatory to this MOA; and

WHEREAS, the parties listed below were invited to participate as consulting parties for the portion of the SEHSR project, from the Virginia and North Carolina state line to Raleigh, and have been invited to concur with this MOA; and

- Catawba Indian Nation
- Atlantic Coast Line & Seaboard Air Line Railroad Historical Society
- Civil War Preservation Trust
- CSX Transportation
- Preservation North Carolina
- City of Henderson
- Town of Wake Forest and the Wake Forest Historic Preservation Commission
- Town of Franklinton
- City of Raleigh and the Raleigh Historic Development Commission
- Town of Youngsville
- M.L. Barnes of the Gulf Petroleum Products Warehouse
- SCP York Powerhouse, LLC. of the Raleigh Electric Company Power House

WHEREAS, to the best of NCDOT-Rail’s knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 USC 3001), are expected to be encountered in the construction work required for the Undertaking;

NOW, THEREFORE, FHWA, NCDOT-Rail, and NC SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on the historic properties.

STIPULATIONS

The FRA and NCDOT-Rail will ensure that the following measures are carried out:

I. General Provision: Fencing

The location of fences throughout the project corridor will be determined during development of the Final Design and Right-of-Way plans by NCDOT-Rail in cooperation with municipal governments and the owner of the rail corridor. Black aluminum fencing will be used when the barrier is within the following NRHP-listed or eligible historic districts.

1. Henderson Historic District and Boundary Expansion
2. South Henderson Industrial Historic District
3. Franklinton Historic District
4. Youngsville Historic District
5. Glen Royall Mill Village Historic District
6. Wake Forest Historic District

7. Downtown Wake Forest Historic District

During final plan preparation and prior to completion of the Construction Consultation, NCDOT-Rail shall afford the NC SHPO and the municipal governments an opportunity to review and comment on the specifications for the fencing. If no comments are received from NC SHPO or the municipal governments within thirty (30) days of confirmed receipt, NCDOT-Rail may assume that the parties do not object to the proposed fencing.

II. General Provision: Closed Crossings

The closure of existing rail crossings throughout the project corridor will be finalized during development of the Final Design and Right-of-Way plans by NCDOT-Rail and in cooperation with municipal governments and the owner of the rail corridor. Within the historic districts listed above in Stipulation I, NCDOT-Rail will use a phased approach with the closings that: (a) begins with installation of a concrete “Jersey” barrier, cautionary signage, and landscaping with evergreen shrubs and/or small trees, or a combination of both, (b) after NCDOT-Rail determines that the public’s habitual use of the crossing has been eradicated, the Jersey barrier will be removed, (c) followed by removal of the signage so that only the plant material remains. Guardrail will not be erected either temporarily or permanently at the closed crossings within the historic districts listed in Stipulation I. All new plant materials will be warranted for two growing seasons and replaced by NCDOT-Rail, if they fail within that time period.

III. General Provision: Bridges and Mechanically Stabilized Earth (MSE) Walls

For the new bridges and MSE walls constructed within the historic districts listed in Stipulation I, NCDOT-Rail and NC SHPO will work together to develop a set of three (3) options for both texture and color treatments that they will provide to representatives of each of the historic districts. Within thirty (30) days of confirmed receipt, the representatives will provide NCDOT-Rail their preferences for the treatments within their district from the three options. If no comments are received from a representative(s), NCDOT-Rail and NC SHPO will jointly determine the texture and color for the bridges and MSE walls within the representative’s jurisdiction.

IV. General Provision: Landscaping

For proposed landscaping installations within the historic districts listed in Stipulation I, NCDOT-Rail will develop landscape plans and provide them to representatives of each of the historic districts. The representatives will have thirty (30) days of confirmed receipt to provide NCDOT-Rail their comments on the landscape plans within their district. If no comments are received from a representative(s), NC SHPO will provide comments on the landscape plan within the unresponsive representative’s jurisdiction. NCDOT will install the plants as per agreed upon plan and warranty their survival for two (2) years from planting.

V. General Provision: Pedestrian Structures in Glen Royall Mill Village and Wake Forest Historic Districts

For the new pedestrian structures constructed within the Glen Royall Mill Village and Wake Forest historic districts, NCDOT-Rail will organize a design charrette with

representatives from the State Historic Preservation Office and each of the communities to determine the design aesthetics of each structure including colors, textures, and other embellishments. After the charrette, NCDOT-Rail will develop design plans and provide them to the State Historic Preservation Office and the communities. The community's representatives will have thirty (30) days after confirmed receipt to provide NCDOT-Rail their comments on the design plans. If no comments are received from a representative(s), NC SHPO will provide NCDOT-Rail comments on the design plan within the unresponsive representative's jurisdiction.

VI. Stop Sign at Chapel of the Good Shepard

To insure no adverse effects to Chapel of the Good Shepard (WR0003), NCDOT-Rail will maintain a stop sign at the existing intersection of SR 1104 (Ed Petar Road) and Ridgeway-Warrenton Road during and after construction.

VII. Access at the William J. Hawkins House

To ensure no adverse effects to the William J. Hawkins House, NCDOT-Rail will coordinate with the property owner to provide access to the property during and after construction.

VIII. Preservation of Cedar Creek Railroad Bridge Piers

To insure no adverse effects to the Cedar Creek Railroad Bridge Piers, the piers will be preserved *in situ* and a preservation easement will be placed on the remains if the right-of-way is transferred from CSX Transportation to another owner.

IX. Cross Street Improvements in the Youngsville Historic District

To insure no adverse effects to the Youngsville Historic District, the necessary improvements to North Cross Street for the accommodation of truck traffic during the construction of the grade separation on Main Street will be limited to the back of the existing right-of-way on the west side of North Cross Street within the historic district . NCDOT-Rail will also install temporary plastic fencing with tree protection signs along the west side of North Cross Street within the historic district prior to the initiation of construction on North Cross Street. The fencing will be removed when the improvements have been completed.

X. Photo-documentation of the Gulf Petroleum Products Warehouse

Prior to the initiation of construction, the Historic Architecture Group of NCDOT will photographically record the existing condition of the Gulf Petroleum Products Warehouse and associated structures in accordance with the attached Historic Structures and Landscape Recordation Plan (Appendix A). Copies of the documentation will be deposited in the files of the State Historic Preservation Office and Historic Architecture Group of NCDOT.

XI. Pedestrian Structure at Raleigh Electric Company Power House

For the new pedestrian structure to be constructed at Jones Street, NCDOT-Rail will organize a design charrette with the owner of the Raleigh Electric Company Power House, representatives of the State Historic Preservation Office, and representatives of

the Raleigh Historic Development Commission to determine the design aesthetics of the structure including the color, texture, and other embellishments. After the charrette, NCDOT-Rail will develop design plans that they will provide to the charrette attendees. The owner and charrette attendees will have thirty (30) days from confirmed receipt to provide NCDOT-Rail their comments on the design plans. If no comments are received from the representatives, NC SHPO will provide comments on the design plan.

XII. North Carolina Railroad Historic Context

The Historic Architecture Group of NCDOT will compile a historic context documenting the history and impacts of CSX Transportation (including the Clinchfield Railroad, the Seaboard Air Line, and the Atlantic Coast Line) and Norfolk Southern Railway on the development of North Carolina communities, agriculture, and manufacturing in their operations area in North Carolina. The document will record the types of structures, buildings, and objects historically associated with CSX Transportation and Norfolk Southern Railway and their activities. The context will be used to evaluate other railroad structures, buildings, and objects in future projects and better understand and assess the effects future projects will have on communities along the corridor. The context will compile documentary materials, bibliographical sources, National Register eligibility considerations, and digital images. The draft report will be provided to the State Historic Preservation Office and they will have sixty (60) days after confirmed receipt to provide NCDOT-Historic Architecture Group their comments. The final report will be in a digital format and will be provided on a CD-ROM to the State Historic Preservation Office. An additional copy of the report will be deposited in the files of the Historic Architecture Group of NCDOT. The final digital product shall be completed and distributed within three (3) years of the execution of this MOA.

XIII. Unanticipated Discovery

In accordance with 36 CFR 800.11(a), if NCDOT identifies additional cultural resource(s) during construction and determines it (them) to be eligible for the NRHP, all work will be halted within the limits of the NRHP-eligible resource(s) and the FRA and NC SHPO will be contacted. If after consultation between the Primary Signatories additional mitigation is determined necessary, the Historic Architecture and/or Archaeology Group(s) of NCDOT, in consultation with the Primary Signatories, will develop and implement appropriate protection/mitigation measures for the resource(s). Inadvertent or accidental discovery of human remains will be handled in accordance with North Carolina General Statutes 65 and 70.

XIV. Amendments

Should any of the Primary Signatories to this MOA believe that its terms cannot be carried out or that an amendment to the terms must be made, that party shall immediately consult with the other party(ies) to develop amendments in accordance with 36 CFR 800.6(c)(7). If an amendment cannot be agreed upon, the dispute resolution process set forth in Stipulation XV will be followed.

XV. Dispute Resolution

Should any Primary Signatories or concurring party to this MOA object within (30) days to any plans or documentation provided for review pursuant to this agreement, that party

shall notify all parties to this agreement. The FRA shall immediately consult with the objecting party(ies) to resolve the objection. If the FRA or the objecting party(ies) determines that the objection cannot be resolved, the FRA will forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:

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

Any recommendations or comments provided by the Council will be understood to pertain only to the subject of the dispute; the FRA's responsibility to carry out all of the actions under this agreement that is not the subject of the dispute will remain unchanged.

XVI. Termination

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

XVII. Duration

Unless terminated pursuant to Stipulation XVI above, this MOA will be in effect until FRA, in consultation with the other Signatory Parties, determines that all of its terms have satisfactorily been fulfilled, that amendments are needed in accordance with Stipulation XIV above, or if NCDOT-Rail is unable or decides not to construct the Undertaking.

Execution of this Memorandum of Agreement by FRA, NCDOT-Rail, and NC SHPO, its subsequent filing with the Council, and implementation of its terms evidence that FRA has afforded the Council an opportunity to comment on the Undertaking, and that FRA has taken into account the effects of the Undertaking on the historic properties.

AGREE:

Federal Railroad Administration:

_____ Date: _____
name
title

North Carolina State Historic Preservation Officer:

_____ Date: _____
Kevin Cherry, Ph.D.

North Carolina Department of Transportation Rail Division:

_____ Date: _____
name
title

FILED:

Advisory Council on Historic Preservation:

_____ Date: _____
name
title

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CONCUR:

Catawba Indian Nation

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CONCUR:

Atlantic Coast Line & Seaboard Air Line Railroad Historical Society

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CONCUR:

Civil War Preservation Trust

name
title

Date: _____

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CONCUR:

CSX Transportation

name
title

Date: _____

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CONCUR:

Preservation North Carolina

name
title

Date: _____

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CONCUR:

City of Henderson

name
title

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CONCUR:

Town of Wake Forest

name
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Date: _____

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CONCUR:

Wake Forest Historic Preservation Commission

name
title

Date: _____

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CONCUR:

Town of Franklinton

name
title

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CONCUR:

City of Raleigh

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title

Date: _____

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CONCUR:

Raleigh Historic Development Commission

name
title

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CONCUR:

Town of Youngsville

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CONCUR:

M.L. Barnes of the Gulf Petroleum Products Warehouse

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Date: _____

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CONCUR:

SCP York Powerhouse, LLC. of the Raleigh Electric Company Power House

name
title

Date: _____

APPENDIX A

Historic Structures and Landscape Recordation Plan For Proposed Southeast High-Speed Rail Project Segment From the Virginia-North Carolina State Line To Raleigh, North Carolina

**TIP Project No. P-3819
Federal Aid Project No. FR-HSR-0057-11-01-00**

Photographic Requirements

- Overall views of the Gulf Petroleum Products Warehouse, its associated structures, and surrounding landscape.
- Views of the property and landscape showing the relationship to the railroad and road.
- All views to be keyed to a site plan that includes a North arrow.

Photographic Format

- Color digital images (all views). Images are to be shot on a SLR digital camera with a minimum resolution of 6 megabyte pixels, at a high quality (preferably RAW) setting, to be saved in TIF format as the archival masters and labeled according to the State Historic Preservation Office standards.
- All processing to be done to archival standards.
- The accompanying printed inventory of the images – including subject, location, date, and photographer information for each image – is to be completed according to the State Historic Preservation Office standards.

Copies and Curation

- One (1) set of all above mentioned photographic documentation, including a compact disc of labeled images, will be deposited with the North Carolina Office of Archives and History/Historic Preservation Office to be made a permanent part of the statewide survey and iconographic collection.
- One (1) contact sheet shall be deposited in the files of the Historic Architecture Group of NCDOT.