THE HISTORIC PRESERVATION OF RAILROAD PROPERTY AND FACILITIES

(110–134)

HEARING

BEFORE THE

SUBCOMMITTEE ON

RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 5, 2008

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

42–775 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
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June 4, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee on Railroads, Pipelines, and Hazardous Materials Majority Staff

SUBJECT: Hearing on the Historic Preservation of Railroads and Facilities

PURPOSE OF HEARING

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Thursday, June 5, 2008, at 2:00 p.m., in 2167 Rayburn House Office Building to receive testimony on the effects of Federal historic preservation requirements on the development of rail infrastructure. The hearing will consider whether Federal requirements for preservation of historic sites are creating unnecessary delays and administrative burdens for improvements to rail infrastructure, and whether there is a need for legislation to change the historic preservation process.

BACKGROUND

Existing Federal Requirements for Historic Preservation

The basic Federal historical protection requirements are found in section 106 of the National Historic Preservation Act of 1966; 16 USC 470f.

Section 106 comes into effect when proposed action by a Federal agency (such as a grant or permit) could affect an historic property (see discussion below of what properties are covered). In these cases, the Federal agency is required to consult with the affected State Historic Preservation Office ("SHPO") and others to determine whether the proposed Federal action will adversely affect the protected property. If there is no agreement on adverse effect, a Federal agency, the Advisory Council on Historic Preservation ("ACHP"), determines whether there will be an adverse effect.

In cases where there will be an adverse effect, the law establishes a process for consultation in an effort to develop a Memorandum of Understanding between the agency and the SHPO on

whether measures will be taken to avoid, minimize or mitigate the adverse effects. There is also a process for the agency and ACHP to reach agreement, if there is no agreement with the SHPO.

Special additional requirements are imposed on projects of the Department of Transportation ("DOT") affecting historic properties. For DOT projects, 49 USC 303, and 23 USC 138 provide that the Secretary shall approve a project requiring use of land of an historic site of national, state or local significance only if the Secretary finds that there is no "prudent and feasible alternative to using that land" and "the program or project includes all possible planning to minimize harm to the . . . historic site." The law also provides an exemption for projects having a "de minimis" impact on an historic site, with detailed requirements for how a finding of "de minimis" impact shall be made.

What Historic Sites are Eligible for Federal Protection

In general, protected sites are those which are listed in the National Register of Historic Places, or sites which are eligible for listing, i.e. sites which are unlisted but meet the criteria for listing.

The National Register is maintained by the National Park Service. Ordinarily, a site must be more than 50 years old to be listed or eligible. The criteria for listing include an association with significant historical events or lives of historically significant persons, embodying "distinctive characteristics of a type, period, architectural style or method of construction, or that represent the work of a master designer, possessing high artistic values, or that representing a significant and distinguishable entity whose components may lack individual distinction". A property less than 50 years old may be listed "if it is of exceptional value or significance".

Exemption of Interstate Systems

The SAFETEA-LU bill of 2005 included special provisions governing how the Interstate Highway System would be handled under the special DOT provisions on historic preservation. 23 USC 103(c)(5) provides that except as otherwise provided in the section, "the Interstate System shall not be considered to be an historic site under section 303 of title 49 or section 138 [of title 23]". Section 103(c)(5) also gives the Secretary authority to determine that individual elements of the Interstate System possess national or exceptional historic significance and should be covered by the DOT historic preservation laws. Acting under this authority, the Secretary has compiled a list of more than 100 portions of the Interstate System that will be given historical protection. Most of the listed portions are bridges and tunnels, but there are also a number of road segments, including 150 miles of the Pennsylvania Turnpike, 60 miles of the Columbia Oregon River Highway, and 30 miles of Alligator Alley in Florida.

Current Protection of Historic Sites for Railroads

A first review of the National Register indicates that about 2,300 rail facilities are listed on the Register. There is no way to determine how many additional facilities would be protected on the basis of a finding that they are eligible for inclusion in cases which if there was a proposed Federal action affecting the facility.

According to the National Trust, the properties listed in the Register include 19 corridors or entire railroads, including tourist railroads and other scenic corridors. The Trust defends the appropriateness of listing entire corridors. They assert that corridors can have "a historical significance independent of the rail ties, structure, signage and signals that comprise it." They contend that corridors may be "historically significant as well established pathways," between cities.

Rail corridors have been afforded protection. An example is the 66 mile Enola low grade line in Lancaster County, Pennsylvania. In an abandonment proceeding before the Interstate Commerce Commission ("ICC") it was determined by the keeper of the National Register that the corridor had historic significance and was eligible for listing. The ICC required that the corridor not be dismantled and plans are being developed to connect portions of the corridor to trails.

Problems in Historic Preservation for Railroads

At the hearing, witnesses from the Alaska Railroad and the North Carolina Department of Transportation are expected to urge modification of the laws governing historic preservation for railroads. The Alaska Railroad supports the need for legislation by citing cases in which Alaska's SHPO has contended that the entire 450 mile railroad is an historic site, which has required historic protection procedures for individual facilities which do not have historic merit on their own. The railroad contends that this process for these facilities delays projects and imposes unnecessary expenses for consultant's fees.

The Alaska State Historic Preservation Office has submitted a memo on its efforts to prevent unreasonable burdens arising from the designation of the entire railroad. The SHPO asserts that they are trying to negotiate a programmatic agreement for activities that would not have an adverse effect on historic properties. For these activities, the SHPO would not require Section 106 special negotiations and agreements, but only annual reporting. Examples are siding extensions, bridge abutment repairs, construction of new tracks in existing yards, and construction of new set out tracks. They have also reached agreement with the railroad on replacement of 57 wooden bridges.

The Alaska SHPO also asserts that the railroad has not exercised its right to appeal the designation of the entire corridor to the keeper of the National Register.

The North Carolina DOT ("NCDOT") claims that the North Carolina SHPO sought to designate the entire corridor between Raleigh and the state line as a historical site, and that this required new historic protection processes for structures within the corridor which had already been evaluated. The new evaluations added 6 months and $150,000 of added costs to the project schedule.

Legislative Issues

The National Trust for Historic Preservation argues that there are administrative remedies available to streamline processing of historically insignificant features of large historic sites, such as rail corridors. These include programmatic agreements such as the one described for Alaska SHPO above and administrative exemptions.

If a decision is made to establish a legislative exemption for railroads from historic preservation protection, similar to the exemption for the Interstate Highway System, there are important subsidiary issues of the scope of the exemption.

The highway exemption provides that "the Interstate System shall not be considered to be an historic site" but that "individual elements" of the system may be. It is not clear what a similar exemption for railroads would cover. An exact parallel would seem to be to exempt the entire national rail system. This would not exempt the entire system of any single rail carrier. With respect to parts of the system that could receive protection, the highway provision allows the Secretary to protect "individual elements" of the system. This provision has been interpreted to allow designation of highway segments up to 150 miles in length. In rail cases, entire corridors have been deemed eligible for listing on the register. If the highway model is followed, the Secretary would be allowed to decide that a rail line of 150 miles should be protected, as the Secretary decided to protect 150 miles of the Pennsylvania Turnpike.

Another issue is whether the 2,300 rail facilities already listed on the National Register, which include 19 railroads and rail corridors, would continue to be protected.

WITNESSES

Mr. John M. Fowler
Executive Director
Advisory Council on Historic Preservation

Mr. Thomas E. Brooks
Assistant Vice President, Projects & Chief Engineer
Alaska Railroad

Mr. Patrick B. Simmons
Director, Rail Division
North Carolina Department of Transportation

Mr. J. Rodney Little
Director, Division of Historical and Cultural Programs
Maryland Historical Trust

Ms. Elizabeth Merritt
Deputy General Counsel
National Trust for Historic Preservation

Ms. Marianne Wesley Fowler
Senior Vice President of Federal Relations
Rails-to-Trails Conservancy

HISTORIC PRESERVATION OF RAILROAD PROPERTY AND FACILITIES

Thursday, June 5, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:06 p.m., in Room 2167, Rayburn House Office Building, Hon. Corrine Brown [Chairman of the Subcommittee] presiding.

Ms. BROWN OF FLORIDA. Will the Railroad, Pipelines and Hazardous Material officially come to order.

The Subcommittee is meeting today to hear testimony on the historical preservation of railroad property and facilities. Today's hearing is in response to an amendment offered and withdrawn during Full Committee consideration of the Passenger Rail Investment and Improvement Act of 2008. The amendment would prevent Federal historical protection for an entire railroad line or corridor in response to a claim by the Alaskan Railroad and the North Carolina Department of Transportation that the historical protection process has led to costly delays in capital improvement with no benefits to historical preservation.

I believe the Committee goal should be to ensure that any action it takes respects the valuable process of protecting our Nation's heritage while ensuring a fair process to rail providers that allows them to adapt to future needs without undue costs and delays.

The testimony of the Advisory Council and the national trust points that there are administrative agreements to resolve the problems raised by both parties. This hearing has brought the problem raised by the Alaskan Railroad and the North Carolina to the attention of the Advisory Council. I think there is a willingness to resolve these concerns administratively, and I would encourage all of the parties involved to work toward an equitable solution to any possible disagreements that have arisen.

We must ensure that we are not looking for a solution to a problem that may not exist. Prior to this markup, the issue of historical preservation and its impact on the rail system have never raised with me or the Committee, and I haven't heard from any other rail providers facing similar problems. However, I look forward to learning more about the problems from the witnesses appearing today and pledge to work with my colleagues to ensure that the Alaskan Railroad and the State of North Carolina and all other rail providers are being treated fairly.

I want to thank our panelists for agreeing to join us today, and I look forward to hearing your testimony.

Before I yield to Mr. Shuster, I ask that Members be given 14 days to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses without a statement by the preservation action. Without objection, so ordered.

I now yield to Mr. Shuster for his opening statement.

Mr. SHUSTER. Thank you, Madam Chairwoman, and I appreciate you holding this hearing today.

As you know, the amendment that I offered concerns historical designations of railroads. I have worked with Mr. Young from Alaska and Mr. Coble on this amendment. We began to hear complaints that historical designations were impeding some of the railroads' ability to maintain tracks in a safe manner.

We know that this issue is particularly important, as I mentioned, to Alaska and to North Carolina and, of course, potentially other rail lines around the country, and again, Mr. Coble and Mr. Young were very involved in crafting this amendment.

In Alaska there are attempts by State historic preservation officials to declare entire stretches of lines as historic. I am not talking about historical train stations, but actual track that trains run on. Even mundane projects have to be reviewed by the Historic Preservation Office, costing the railroad both time and money. If we go too far down this path of historic preservation bogging down necessary improvements and safety modifications with red tape, I believe we could be setting ourselves up for an historic accident. We had a similar situation regarding interstate highways, and we corrected this problem in SAFETEA-LU when we passed it a couple of years ago.

This amendment would give railroads exactly the same treatment as interstate highways for historical purposes and would exempt rail lines from historical designation. I'm open to suggestions as to how to craft this amendment to protect clearly historical stations and possibly bridges and tunnels, but I do not believe that entire mile-long stretches of active track should ever be considered historic.

The provisions will also benefit Amtrak freight and commuter lines.

From a policy standpoint, I think we need to give the Department of Transportation a role in ensuring the protection of rail facilities of true historic interest while at the same time ensuring that rail safety is not compromised. And I hope, Madam Chair, you will work with me on this important issue as we move forward with the Amtrak reauthorization bill. And with that, I yield back.

Ms. BROWN OF FLORIDA. Mr. Oberstar.

Mr. OBERSTAR. Thank you, Madam Chair, and I thank the witnesses for being here, Mr. Shuster for participating, and for the issues that were raised in the course of our markup.

We meet, in fact, pursuant to discussions held during the markup of the Amtrak authorization bill, discussions concerning statements that the Federal historic preservation process has led to costly delays in improvements in infrastructure for railroads, with little or no benefit for historic preservation. Those complaints came

from rail development interests in Alaska and in North Carolina, and the remedy proposed at the time was to limit historical preservation to very specific facilities, terminals, bridges, but not entire lines or corridors for railroads.

Well, we need to explore that issue in the course of today's hearing. Railroads certainly are deserving of historical preservation. They have been at the center of our development as a transcontinental economy, as transcontinental transportation. They are, along with the Interstate Highway System, at the very basis of our prowess, our economic prowess as a Nation.

Certainly one of the most vivid and dramatic examples of that significance of railroading in our history is the pounding of the golden spike that linked the Central Pacific and the Union Pacific and connected the United States coast to coast. It is the subject of many History Channel programs, which I delight in observing.

Many of our rail lines that cross through mountainous terrains are marvels of engineering. Rail stations are marvels and models of outstanding architectural achievement in engineering and construction achievement. But I also at the same time point out that it was the destruction of Pennsylvania Station in New York that was a major factor that led to the enactment of the National Historic Preservation Act of 1966. I remember that very well serving on the staff here.

I think we need to understand how the Federal historic preservation process works. Federal law does not absolutely prohibit Federal actions that permit the impairment of historic properties. Rather, Federal law requires that before the action occurs, there should be consideration of a range of actions to mitigate or to avoid the impact, consideration of alternatives that produce similar benefit without destroying historic properties.

Railroads are covered by a multiplicity of historic preservation laws; 2,300-plus rail properties are listed in the National Register. They are subject to those procedures. And additional rail properties are covered because when there is a proposed Federal action, there will be historic protection for sites that meet the criteria for listing those sites on the National Register. And even if the sites are not listed, there is an issue that comes up.

The rail properties that are covered in the register, and I have a complete list of these here, include bridges, tunnels and viaducts. There are 19 corridors or railroads that are listed now in the National Register. They may be listed for their historical significance as links between important cities. They may be listed for excellence in construction or for their scenic value, such as the Stone Arch Bridge in Minneapolis that goes from Nicollet Island and which James J. Hill, the founder of the Great Northern Railroad, insisted be built on an S curve so that the passengers on his freight train, as they went around the curve, could look back and have something to see of significance and beauty. And it was built with Mankato stone, which is a unique yellowish-colored stone that is very attractive and also very resistant and has survived all these—well, let's see. That was built in 1893, and it is still with us today. But it was on the National Register of Historic Places, so when the Great Northern Railroad became BNSF, and the BNSF decided they no longer needed to move freight through that area, that

bridge wasn't destroyed. It was protected, and it is today a bus, rail, pedestrian and bicycling link, and thousands of people come every year to lunch on Nicollet Island to walk the bridge, to see the beauty that railroad magnate James J. Hill created and that the Empire Builder railroad once traversed.

So we have Rails-to-Trails because we have been able to preserve corridors that once were rail facilities. And just on Sunday I did the Paul Bunyan Trail ride for our 10th year. That, too, was launched in 1893; 90 years later it was terminated. The freight rail service was terminated on that stretch, about 100 miles of rail. And Terry McGaughey, the midwife of the Paul Bunyan Trail, went up like a 20th-century Paul Revere asking the communities to band together to put up funds to preserve that right-of-way and convert it to a bicycle/pedestrian facility. And today we 650,000 users of the Paul Bunyan Trail. We did the 11th annual Ride with Jim bicycle event on the Paul Bunyan Trail. With my new cobalt hip, I did a 25-mile ride on the trail.

So today we are going to hear from interests, from the Advisory Council, the National Trust, but I want the Committee to pay attention to the administrative remedies available to deal with the problems raised.

Historic preservation may be required for individual facilities that in themselves may not be historically significant, but they are part of a corridor that is historically significant. And I know there are problems that were raised on behalf of Alaska and on behalf of North Carolina in our markup of the Amtrak bill. If there are problems with the processing that takes time to do these things, we can deal with the process. But I think that we can speed that process up as we did in SAFETEA-LU under the direction of the Chairman, then-Chairman Young.

A comparison has been made to the Interstate Highway System, and the Interstate Highway System is not 50 years old; the act is 50 years old. There were some interests in the course of our work on SAFETEA-LU said, oh, my goodness, the sky is falling, the interstate is 50 years old, it is going to be subject to historic preservation, and we won't be able to add or change interchanges, or add lanes or delete lanes or whatever. The interstate isn't 50 years old; one or two segments are, but it is an evolving program. And so the exception was for the entire interstate system as a law, as a structure.

So, use that panel, that pattern, for the rail program, well, then, I think there are some distinctions that need to be cited. And I think the request was for a much broader exception than was necessary to meet the needs. And I want to listen carefully to the concerns and to the obstacles and find ways that we can accomplish this without doing harm to the National Trust For Historic Preservation nor doing harm to railroads who need investment for expansion.

Madam Chair, thank you.

Ms. BROWN OF FLORIDA. Thank you.

The gentleman from Alaska.

Mr. YOUNG. Thank you, Madam Chairman.

I thank the Chairman for his comments.

We have a unique situation in Alaska. We have a railroad that is 50 years old and actually older. McKinley came up and drove the golden spike, and it is still the major means of transportation within the State of Alaska. And we are not asking to destroy any historical sites. In fact, a lot of the sites in Alaska already been identified and are protected under my amendment. But we are in the process of trying to replace approximately 50 bridges that need to be replaced, or we are going to lose lives.

We are in the process of straightening out the rail in areas which are extremely dangerous, because in the old days we didn't have the technology nor the equipment. And it is extremely important that this railroad still function on time because we can't do the work we need to do because we have different weather patterns, much like Minnesota, and we have to have the ability to do so. And we have a concern that there are those within the historical preservation group that will utilize this to imperil the ability for the Alaskan Railroad to operate. And that is the purpose of my amendment.

And I truly believe that we ought to expand it like we did in the highway bill to a point where there cannot be an impediment to improve the safety of passengers and freight that are utilizing the railroad. And as I mentioned before, the railroad has been very good under the leadership and the tutelage of the managers, the board itself, of protecting, but it would be very nearly impossible to go through some person under the present act itself on historical preservation who will say they haven't taken consideration the replacement of glass with the original type glass in a certain terminal. That would be, to me, an extension of not logic, but that does happen in our society.

So I am asking you, especially this Committee, to look at the railroad in total that it is declared historical, and it does happen, and the effect upon the economy of Alaska, the ability to move products, the ability to move military to and fro from our port, and the safety of those that ride the train.

And so I do think there is room here to work this out, but I don't want one law to take and impede another agency that is trying to do what they should do for the good of the State of Alaska and this Nation.

I originally intended to have just this Alaska in this program and not all railroads, but I think all railroads do have a problem. But I am not going to go that far if I can have some relief in Alaska for this railroad which is crucial to the economy of the State.

And so I do think there is some room here. I will listen to the testimony from these witnesses, and let's solve a problem that can be very damaging in the State of Alaska. And with that I yield back the balance.

Ms. BROWN OF FLORIDA. Thank you.

I would like to welcome and introduce today's panel. Our first witness is Mr. John Fowler, Executive Director of the Advisory Council of the Historic Preservation. Our second witness is Mr. Thomas Brooks, assistant vice president and project and chief engineer of the Alaska Railroad. The third is Patrick Simmons, director of the rail division of the North Carolina Department of Transportation. And our fourth witness is Ms. Elizabeth Merritt, deputy

general counsel for the National Trust for Historic Preservation. Fifth is Rodney Little, a director of the division of historic and cultural programs for the Maryland Historic Trust.

And our final witness is Mrs. Fowler, senior vice president of Federal relations of the Rail-to-Trail preservation action, has submitted testimony for the record. A copy of the testimony is available to each of the Members' folders.

Let me remind the witnesses, under our Committee rules oral statements must be limited to 5 minutes, but the entire statement will appear in the record. We will also allow the entire panel to testify before the questioning of the witness.

We are pleased to have you all here this afternoon, and I recognize Mr. Fowler for his testimony.

TESTIMONY OF JOHN M. FOWLER, EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION; THOMAS E. BROOKS, ASSISTANT VICE PRESIDENT FOR PROJECTS AND CHIEF ENGINEER, ALASKA RAILROAD; PATRICK B. SIMMONS, DIRECTOR, RAIL DIVISION, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. RODNEY LITTLE, DIRECTOR, DIVISION OF HISTORICAL AND CULTURAL PROGRAMS, MARYLAND HISTORICAL TRUST; ELIZABETH MERRITT, DEPUTY GENERAL COUNSEL, NATIONAL TRUST FOR HISTORIC PRESERVATION; AND MARIANNE WESLEY FOWLER, SENIOR VICE PRESIDENT OF FEDERAL RELATIONS, RAILS-TO-TRAILS CONSERVANCY

Mr. JOHN M. FOWLER. Thank you, Madam Chairman. It is a pleasure to be here on behalf of the Advisory Council on Historic Preservation. The Council is an independent Federal agency created by the National Historic Preservation Act to advise the President and the Congress and to oversee the section 106 process. It is made up of 23 Presidential appointees, Federal agency heads and leaders of preservation organizations. It includes the Secretary of Transportation in its membership.

Section 106 of the National Historic Preservation Act is the primary Federal protection for historic properties. It sets up a consultative process to evaluate the impacts of Federal activities on historic properties. It has limits. There has to be Federal involvement, and in the end the process is advisory. It can't stop a project.

Over 100,000 cases a year go through section 106 review. All but a few of these are resolved in an expeditious manner. The ACHP's regulations which implement section 106 also offer a variety of tools to deal with special needs. We use them regularly for cases like the one presented today.

The railroad industry's exemption request is not at all unprecedented. Several industries in the past have sought congressional action to avoid historic preservation reviews. In 1989, the National Aeronautics and Space Administration sought a legislative exemption from section 106 claiming that it placed an undue burden on their programs. The Congress rejected it and asked the Advisory Council to develop administrative remedies. The ACHP worked with the National Aeronautics and Space Administration to develop an agreement that still guides section 106 compliance for NASA.

In 2001, the pipeline industry sought a legislative exemption for historic pipelines, pipelines such as World War II's famous Big and Little Inch pipelines. The Congress again rejected the request, and the ACHP worked with the Federal Energy Regulatory Commission to complete an exemption created through the section 106 regulations.

In 2004, the telecommunications industry wanted a legislative exemption for cell tower construction. Congress again refused to grant such an exemption, and the ACHP worked with the Federal Communications Commission to develop a national agreement that streamlines section 106 reviews for cell towers.

And as has been noted, the Federal Highway Administration initially sought a legislative exemption for dealing with the Interstate Highway System, but working cooperatively with the ACHP they developed an administrative exemption that now covers the entire Interstate Highway System.

I think the message is consistent. After examining the issue, the Congress has regularly found that the basic law of section 106 is sound. There are adequate administrative tools that exist, and legislative exemptions are unnecessary. The ACHP is prepared to work with the rail industry, Federal agencies, and stakeholders to reach the same kind of successful conclusion to the present challenge without resort to legislative exemptions.

Thank you.

Ms. BROWN OF FLORIDA. Mr. Brooks.

Mr. BROOKS. Thank you, Chairman Brown, and Chairman Oberstar and Members of the Subcommittee, for holding this hearing and inviting me to speak here today on behalf of the Alaska Railroad.

I would like to thank Representative Shuster for offering the amendment at the markup and Representative Young for his leadership in bringing the issue to the attention of the Committee.

My name is Tom Brooks. I am assistant vice president of projects and chief engineer at the Alaska Railroad. Alaska Railroad has a 500-mile-long mainline running from the Ports of Seward, Whittier and Anchorage to the interior city of Fairbanks. We offer a full—year-round full passenger service and freight. The railroad carried over half a million passengers in 2007, and we have extensive freight operations in interstate commerce. Because of our service to five military bases, we have been designated by the Department of Defense as a Strategic Railroad.

The railroad was built and operated by the U.S. Government from 1914, and it was sold to the State of Alaska in 1985. And we are proud of our history, and we actively support historic preservation in numerous ways. These are detailed in the back of materials.

However, the effect of expansively applied historical laws and regulations imperils our ability to maintain our railroads safely and efficiently and compromises the operational business agility vital to our railroad's mission of stimulating State economic development. We support an amendment along the lines of the Shuster amendment that was offered and then withdrawn at the Full Committee markup pending this hearing.

I would like to start by sharing a current problem that illustrates our dilemma very well. We have a bridge at milepost 432.1 that is

160 foot long and spans a small creek at a remote location. Two separate independent historians determined this bridge has no historic merit on its own; however, it has been, in practical effect, declared historic by our State's Historic Preservation Officer, or SHPO, merely because it is part of the Alaska Railroad. This has triggered an extensive bureaucratic process that is meant to preserve and protect historic structures.

The foundation of this bridge is failing badly, and we want to replace it in 2008. We can't. We are currently passing around documents between the Alaska Railroad the Federal Transportation Administration, the National Park Service and the Alaska SHPO. We expect to obtain the required approval so the replacement can be completed in the fall of 2009. In the meantime we have got to get about 150,000 passengers, quite a bit of freight and military equipment across that bridge safely. We believe we can do this, but it is really expensive and very unnecessary. We would like to replace the bridge this season.

We submit that this is a misapplication of public process and squanders Federal resources and public funds. There is really no reason that we couldn't have replaced this bridge this year. The problem is created by overzealous attempts to identify the railroad as a single historic corridor, and this designation automatically triggers the historic protections for this mundane railroad feature, and it lacks historic merit on its own.

Bridge 432.1 represents the sixth time we have been through this process since 2002. It is expensive and delays our efforts to improve safety and efficiency and to serve our customers.

The Shuster amendment will ensure that the historic preservation standards continue to be applied to railroad features with historic merit in their own right, not because they are merely part of a railroad historic district. This amendment would provide the same relief to railroads that was afforded to the Interstate Highway System through SAFETEA-LU, and like the Interstate Highway System, railroads have been evolving since their inception and continue to do so. They have been constructed, expanded and upgraded to serve our national transportation needs. Their integrity depends on continuing maintenance and upgrades so they continue to operate and move passengers and freight efficiently.

The Alaska Railroad is a critical component of our State's transportation infrastructure and must continue its mission as an economic tool. Without the Shuster amendment there is immediate danger that our entire railroad corridor will in practical effect be treated as an historic district.

Safety improvements and routine maintenance and even mundane features such as bridge 432.1 are incurring undue delay and costs, and the problem will get even worse in the future if the railroad corridor is either officially declared a historic district or, as is currently the case, it is simply treated as if we are. While avenues exist to appeal historic determinations, they are made to bodies like the Advisory Council on Historic Preservation or the keeper of the National Register. These entities are firmly grounded in historic preservation and have a far different mission from running a safe transportation system.

In closing, we will gladly continue to support efforts to preserve Alaska's history and the history of Alaska's railroad, but we must also ensure safe operations. Through the Shuster amendment we will continue our historic preservation efforts, focusing them on truly deserving properties while moving ahead with our mission.

Thank you for opportunity to speak, and I will be happy to answer any questions.

Ms. BROWN OF FLORIDA. Mr. Simmons.

Mr. SIMMONS. Thank you, Chairwoman Brown, and Chairman Oberstar, and Ranking Member Shuster and distinguished Members of the Committee. My name is Patrick Simmons. I am director of the rail division with the North Carolina Department of Transportation.

NCDOT is blessed to have the full-service rail program. Our program is nationally recognized for our work with the intercity passenger rail service, and I am pleased to report that the ridership on the two State-sponsored trains is up 20 percent over the last several months.

Just yesterday Governor Easley announced that we will add another State-sponsored train as soon as it can be done in order to meet the growing demand. We are developing the federally designated Southeast High-Speed Rail Corridor, which we refer to as SEHSR. That will link the Northeast with the Southeastern States.

We administer our State's highway-railroad grade crossing safety program, and we are proud to have partnered with Norfolk Southern Railway and the Federal Railroad Administration to create something called the Sealed Corridor. Later this year USDOT will report to the Congress how the Sealed Corridor has saved lives at highway-railroad crossings.

We partner with Norfolk Southern, CSX Transportation and the North Carolina Railroad in an ongoing program of infrastructure investments that improve safety, add network capacity and reduce travel times. We partner with the FRA to operate a railroad industry safety inspection program. We partner with our railroad community to do economic development projects. We also partner with the Virginia Department of Rail and Public Transportation, and the Federal Highway Administration, and FRA and the community of some 50 State and local agencies to develop the design and environmental evaluation of SEHSR.

I am not here today to offend our historic preservation community, for I am very proud of our achievements in North Carolina to preserve historic train stations, equipment, and our contributions to the North Carolina Transportation Museum. Last year the National Trust recognized our body of work and honored us with the John Chafee Award for Excellence in Public Policy. I am here, however, to point out what I believe to be a significant impediment to our Nation's developing transportation policy: designation of railroad corridors as historic. My concern is that such a designation adds significant process, time and cost to project delivery. The prospect of such a designation also will constrain our ability as a State to work with the freight railroads to add capacity and improve safety.

We are at the beginning of a new era in public-private partnerships in our industry. Both parties wish to leverage funds from

each other to add sorely needed capacity and enhance mobility. Adding process and cost—and again, it impedes project delivery.

I note, Mr. Chairman, or Madam Chairwoman, that the railroads are largely privately owned, while the interstate network is a public asset. SAFETEA-LU included the exemption from designation for the Interstate Highway System. This provision effectively places rail at a competitive disadvantage. It also favors public investment in highways versus the developing public-private partnerships between States and railroads.

By not leveling the playing field, our program of infrastructure investment is further constrained from taking advantage of the enhanced economy, efficiency and productivity that the rail mode can offer. Already our Class 1 railroads are wary of governmental regulation, and rightfully so in this case. A requirement such as the historic designation that can apply broadly across their privately owned network will produce a setting that will make the task of entering into public-private partnerships all the more difficult.

Our State has had experience as well with the facilities. We have had some challenges there that we were able to negotiate and overcome and go forward with those projects in good spirit of working together. However, I believe that designating railroad corridors as separate and apart from the facilities and structures as historic adds significant time and cost to project development. It is an impediment to adding network capacity and enhancing safety. I believe it will hinder our ability to foster these public-private partnerships, and I am not sure that it adds materially to the body of knowledge and protects our historic resources. Therefore, I urge the Committee to reconsider the amendment offered by Congressman Shuster, and I thank you for the opportunity to be here today and will be pleased to respond to any questions.

Thank you, Madam Chairwoman.

Ms. BROWN OF FLORIDA. Thank you.

The bell—we are going to stand in recess for about 25 minutes. We have a series of votes, and we will be reconvening as soon as the votes are over. Thank you.

Will the Committee come back to order, please? And Ms. Merritt will get started, please.

Ms. MERRITT. Good afternoon, Chairwoman Brown and distinguished Members of the Committee. I am Elizabeth Merritt, Deputy General Counsel for National Trust for Historic Preservation.

Ms. BROWN OF FLORIDA. Excuse me. Could you please pull your mike up?

Ms. MERRITT. I appreciate the opportunity to testify before you today to share the National Trust's serious concerns about a proposed major exemption from Federal historic preservation laws. The National Trust was chartered by Congress more than a half century ago to lead the private historic preservation movement in the United States.

During the past 2-1/2 decades in which I have served as in-house counsel at the Trust, the Trust has worked tirelessly to implement and enforce section 106 of the National Historic Preservation Act and section 4(f) of the Department of Transportation Act, the laws from which the railroads are seeking a broad legislative exemption.

The Trust has served not only as a preservation advocate in the context of individual projects, but we have also been actively involved over the years in shaping regulations and programmatic agreements, and occasionally even legislation which is carefully designed to address complex implementation issues and special approaches tailored to specific agency needs.

We have described in our testimony, as has the Advisory Council, a number of examples in which these administrative solutions have been very successful in addressing precisely the kinds of concerns that the railroads have presented here. The examples provided by the railroads simply do not represent the kinds of issues that Congress should be dragged into resolving. We urge you not to get pulled into the weeds here. The Federal and State preservation agencies represented at this table have the expertise and the successful models to address and resolve these concerns without the need to do a hatchet job on our Federal historic preservation laws.

The centrality of America's historic railroad resources to our national heritage is well-documented and summarized in the testimony. Our rail corridors have reflected and defined the spirit of our Nation, its culture, history and economy. As a result, railroad preservation has been a longstanding priority in Federal law and policy.

We have provided for the record a list of all 2,486 railroad resources that are listed in the National Register. This is just a sample of all of the historic properties eligible for the National Register nationwide.

Federal historic preservation laws are designed to achieve a balance between preserving the integrity of our historic resources and providing for their efficient and responsible continued use. The fact that a rail corridor is still in use is not a reason for exempting it from consideration for preservation. On the contrary, when these corridors have legitimate historic significance, they deserve to be included within the scope of our Federal preservation laws.

Other active transportation facilities such as airports and historic parkways are managed in a way that respects their historic character and complies with Federal law. The railroads should live up to the same standard.

Of course, Federal preservation laws only apply when the railroads receive Federal funds or permits. In the absence of such Federal benefits, these preservation laws pose no barrier at all for the railroads to do whatever they want with their historic property, even destroying it. But it is not appropriate for private corporations or State agencies to use Federal taxpayer dollars to destroy historic resources without at least participating in the review process like other industries and agencies.

There is no showing that the railroads are unduly or disproportionately burdened by preservation laws that all other industries follow when they receive Federal funds and permits. The section 106 regulations include a number of flexible tools that could be used to address the railroad's concerns. Our testimony mentions three in particular.

The first is programmatic agreements which are often used to streamline or eliminate review from minor actions. For example, the North Carolina DOT recently signed a PA to streamline review

for minor transportation projects throughout the State. According to the North Carolina SHPO, well over 100 projects per year are reviewed under this PA and all have been resolved quickly and successfully. Why couldn't such a PA be developed for rail projects?

As another example, the Alaska Railroad has a PA in place that allows for the replacement of all of its 57 historic timber bridges, further evidence that section 106 is not an obstacle to necessary upgrades.

The second tool under section 106 is known as program comments, issued by the HCHP, which comment on an entire category of undertakings in lieu of individual reviews. These have been used extensively by the Defense Department to accomplish section 106 compliance for literally tens of thousands of historic properties.

The third tool is that the ACHP can exempt certain categories of undertakings from section 106. This is the model used for the interstate system. However, consultation is required with the ACHP to develop and craft such an approach to ensure that it doesn't sweep too broadly. And the DOT has not yet initiated such consultation. The devil is in the details. And it should be the ACHP and the DOT rather than Congress undertaking the complex task of attempting to define the scope of an exemption.

In addition to these administrative tools under section 106, section 4(f) also has streamlining mechanisms which have not been brought to bear here. This is important because section 4(f) is a more stringent law. First, section 6009 of SAFETEA-LU included a new exemption for de minimis impacts on historic properties and other resources protected by section 4(f). This was a carefully crafted, consensus-based amendment which the National Trust was actively involved in developing. We believe the de minimis exemption could be used to address many of the railroad's concerns regarding section 4(f). As far as we could tell, this has not been evaluated. In addition, FHWA has adopted detailed regulations and guidance and a number of programmatic section 4(f) evaluations which have also been used to streamline review under section 4(f). All of these tools should be fully evaluated before a legislative exemption is considered.

In conclusion, there are proven administrative tools available and we are confident that all of the railroad's concerns can be addressed through consultation using these administrative tools. We respectfully ask Congress for the opportunity to show that those administrative solutions can work. The National Trust stands ready and willing to participate in that process. Thank you.

Ms. BROWN OF FLORIDA. Mr. Little.

Mr. LITTLE. Thank you, Madam Chairwoman. My name is Rodney Little. I am a member of the National Conference of State Historic Preservation Officers and I currently serve as the State Historic Preservation Officer for the State of Maryland.

Madam Chairwoman, thank you and Ranking Member Shuster and Members of the Subcommittee for this opportunity to present our views of the National Conference of State Historic Preservation Officers.

I have served as the State Historic Preservation Officer for Maryland for almost 30 years. In that time we have dealt in Maryland with a great many types of historic properties. We have our share

of the signers of the Declaration of Independence, but we also have many sites that are in contemporary daily use and with high technological needs.

For example, the oldest airport in the United States is in the State of Maryland. It was started in 1909. It is in continuous use today. And it has been on the National Register since about 1980. We have several other airports that are on the National Register.

In the field of railroads, we deal every day with very historic railroad features. The first regular—the regular carrier passengers and freight in the United States, the B&O Railroad, started in Maryland and we deal with facilities of that railroad that date from the 1930s—or, I am sorry, the 1830s.

We have a very good working relationship with our transportation agencies regardless of modal form, and that certainly includes our rail authorities. I would note with pride that in the 30 years that I have been doing the work, while we have reviewed hundreds of railroad projects, including railroad projects and designated corridors, that there has never been a piece of litigation involving those railroad projects.

Ms. Merritt and Mr. Fowler before me mentioned that there are a number of administrative remedies that perhaps have not been fully investigated here. And I certainly can testify to that from the State of Maryland.

In Maryland we use what has been referred to as programmatic agreements or programmatic approaches. Let me cut through the bureaucratic jargon and talk a little bit about what those are. Over the years, the historic preservation review processes have evolved and are very effective in dealing with a wide variety and diversity of types of projects.

However, every agency has different planning processes. The planning process for highway is very different than the planning process for a railroad, is very different than the planning process for a housing development. What we do in our State is we try to take a programmatic approach to those kinds of problems as opposed to a project-by-project review. That has worked very well, and as far as I have been able to see in this case, that programmatic approach has not been applied to some of these problems that we are talking about.

In order for that to work, the State Historic Preservation Office has to be willing to enter into such programmatic approaches. It has to be willing to make compromises and trade-offs up front. And likewise, the State or Federal agencies on the other side need to be willing and capable of carrying out those kind of sophisticated programmatic approaches. They work.

In my long career I have, unfortunately, had to deal with quite a number of public projects that were subject to litigation on preservation issues. The first question that the courts always ask is, Are there administrative remedies that will take care of this issue? Have those administrative remedies been utilized? And have they been exhausted? Were this particular issue before the courts right now, I think they would send us all back to the drawing board and say, You have not exhausted the administrative remedies.

Thank you very much.

Ms. BROWN OF FLORIDA. Ms. Fowler.

Ms. WESLEY FOWLER. Madam Chair, Ms. Brown, Chairman Oberstar, Congressman Shuster, Congressman Young, other distinguished Committee Members, thank you for the privilege of addressing you today on this most important topic. I am Marianne Fowler, Senior Vice President of the Rails-to-Trails Conservancy.

Let me draw your attention to the wall monitors, and I invite you to focus on the pictorial representations of historic railroad features. They are, after all, what this hearing is about. Many of them have been preserved through the auspices of the National Historic Preservation Act. Let me assure you, I will not be offended if you divide your attention between these pictures of America's railroad heritage and my words.

RTC speaks today in opposition to any attempt to exempt railroad corridors and facilities from Federal historic preservation laws. Here is why: Congress has mandated that it is our, quote, national policy to preserve established railroad rights of way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy-efficient transportation use.

It is RTC's mission to aid in this process by identifying rail corridors that are not currently needed for rail transportation and work with communities to facilitate the conversion of these corridors into public trails and nonmotorized transportation corridors.

Congress has given us three tools with which to accomplish this goal.

First, the rail banking statute which allows for the transfer of a corridor on which a rail company no longer wants to conduct service to a willing trail manager. This process, however, depends upon not only the willingness of the interim trail manager, but also the willingness of the railroads. And the railroads are not always willing.

It is in this context in which section 106 provides a critical constraint to the ability of private railroads to dismantle historic transportation corridors. To carry out its section 106 obligations, the Surface Transportation Board imposes conditions that temporarily bar railroads seeking abandonment authorization from removing any historic bridges, features, other features that require railroads to engage in historic preservation consultation. These preservation conditions give public agencies and potential trail managers the time necessary to undertake the due diligence and reviews necessary to proceed with public land acquisitions, and ensures that important historic structures and features that will allow for trail use and enhance the trail experience are not removed until these consultations are complete.

It is the synergy between these two provisions of Federal law that have now given us over 15,000 miles of active, open, rail trail and have also given us many more miles of rail trail, rail corridor that is in project stage. And so we oppose this exemption.

Last night I had occasion to speak to the president of one of America's railroads. And he said to me, Marianne, you can't expect railroads to care, railroad companies to care about the history, about the history of the railroads. Their obligation is to care about the economics of their company and the functionality of the system. And I thought for a moment. And I responded to him, no, I do expect you to care. I expect you to care the very most because you

own our history, a history that so infuses the American sense of ourselves. It informs our literature. It informs our art. It informs our music. In some communities I am told it is even so much a part of that community that they have named their basketball team the Altoona Curves after a marvelous feat of railroad engineering that comes through the mountains and curves into Altoona. So gentlemen, I would ask you to rise to your higher responsibility of protecting our railroad heritage. Thank you very much.

Ms. BROWN OF FLORIDA. Thank you.

And I thank all of you for your testimony. We will start with Mr. Oberstar for questioning.

Mr. OBERSTAR. Thank you, Madam Chair. And I thank all the witnesses for their splendid testimony. I think that the frosting on the cake, the icing, if you will, is the show of railroad history captured in those slides. A wonderful representation. You finished with the project I started with in Minneapolis, the St. Anthony Falls Nicollet Island project.

I want to come to the Alaska Railroad issue. And I have a timeline. Chairman Young provided Member high-priority project designation for replacement of this bridge 432.1 in SAFETEA-LU bill. And the Alaska Railroad undertook engineering analyses in the summer of 2007, showed the bridges in need of replacement. And the railroad submitted all the environmental requirements under NEPA to Federal Transit Administration in January of this year. Right?

In March FTA determined the bridge was not eligible for National Register because it wasn't historic. In April the State SHPO, not the Federal Government, not an agency of the U.S. Government, not the Congress, your own State agency disagreed and determine the project would have an adverse effect because of the bridge association with the Alaska Railroad.

Then the Alaska Railroad began a process of showing that there is no feasible or prudent alternative to replacing the bridge. And it completed that work in April. And FTA and the Alaska Railroad submitted that information to the National Park Service under the 4(f) provision for review, and FTA is expected to get a response in July from the Department of Interior. Is that correct?

Mr. BROOKS. That is our best guess, yes.

Mr. OBERSTAR. That is not a horribly long process.

Mr. BROOKS. The problem we have is it causes us to meet the windows that we need for construction. We can't proceed with the project under Federal guidelines until all the approvals are in place. We basically have been unable to commit to ordering the steel for the bridge and nailing down some of those lead items.

Mr. OBERSTAR. But from March through July, to get a process completed, is not an undue burden. If you had started the process last summer, you would be under construction now.

Mr. BROOKS. Well, I think the process is a fairly long process. We did start last summer with the second evaluation of the bridge history.

Mr. OBERSTAR. That wasn't impeded by the historic preservation.

Mr. BROOKS. Well it is part of the historic preservation process. I mean, it takes a while to put all that together, use a historic—we were using a historical consultant to do it, so that we weren't

able to have a historic evaluation to put before the FTA until December. We put that before them in early February—or early January, excuse me.

Mr. OBERSTAR. Well, I really don't see the historic preservation provision—it caused the railroad to stop, take stock, make an assessment, evaluate the situation, go through a process that was beneficial for you, beneficial for the historic preservation process, and may well—I mean, there is the designation that there is no feasible prudent alternative. That is your own. Why do you need an exemption? Do you simply want not to go through a process at all?

Mr. BROOKS. I am sorry. The crux of the matter relates to whether it is prudent to do that. You know, it is always feasible to do something. If the Park Service were to determine that it is prudent to replace that bridge, we would have a very difficult time figuring out what to do with it. That process is very—you know, basically we are appealing what we do with our railroad to historians at the National Park Service.

Mr. OBERSTAR. Well, and last year, according to documents that I have requested, the Alaska State Historic Preservations Office and the Federal Railroad Administration and your railroad signed a memorandum of agreement for replacement of timber bridges in the corridor of the railroad. Fifty-seven bridges are included in the agreement. The railroad agreed to retain two of them. Is that correct?

Mr. BROOKS. That is correct.

Mr. OBERSTAR. Is that a burden on the railroad?

Mr. BROOKS. It is a minor burden on the railroad. We do have a programmatic agreement in place to govern our timber bridges. We have agreed that over a third of the bridges in our system are historic.

Mr. OBERSTAR. The agreement gives you an out, to the extent possible.

Mr. BROOKS. I think that is a pretty strong obligation from our point of view.

Mr. OBERSTAR. Mitigation measures include digitization of the documents, preparation of an annotated bibliography, creation of a timber bridge booklet. A lot of people consider timber bridges to be very significant structures, very important to our past and to our future.

Railroading evokes the most sympathetic response from any transportation activity—I don't find people getting fired up about highways, but I do find they fight over a railroad bridge, a covered bridge, a railroad station. About a third of the cities in my district have a caboose or one of those old cow catcher locomotives on display at the entrance to the city or as you depart from the city on the other end. These are historic parts of our history, of our past. If it takes just a couple of months, or 3 months or 4 months, to go through a process and evaluate it, I don't see how we are creating a burden for you.

Now, both Mr. Brooks, Mr. Simmons, are you opposed to having rail corridors designated in a historic preservation document?

Mr. SIMMONS. Yes, sir. And I draw the distinction between a corridor and the facilities. As we have carried out our responsibilities,

we have had many opportunities to work with historic facilities, historic structures, and to work through the issues that are relevant there. So we are okay there.

With respect to rail corridors, I note that the corridor listing provided to the Committee, the handout included in Ms. Merritt's testimony, most of those railroads are either tourism railroads or abandoned. And the issue I am trying to bring before the Committee is, as we develop private-public partnerships in this country to make investments that add capacity and safety to active mainline major railroads, that that is a distinction. Those railroads do need to function.

We honor our past in many different ways. But as we have these major transportation facilities, there will be a need to expand their capacity and to add—or to go down a pathway that adds this responsibility to the private sector and to the public sector in working with the private sector, will add process, will add cost. And, Mr. Chairman, it will make our task in the public arena all the more difficult.

Mr. OBERSTAR. Well, there is another responsibility, and that is to the public and to the past. And in the years 1850 to 1871, the Federal Government granted to the railroads 173 million acres of public lands. That at the time, and today, represented in the lower 48, 9 percent of the total land surface of the United States for the public use, convenience and necessity; and the right to own the minerals below the surface and the timber above the surface and to sell that land.

That was an enormous gift bestowed upon the railroads in the public interest to be managed by the private sector. And so now the public sector says, there is a historic value. We just want you to consider it.

If we were to accept the language of the amendment proposed by Mr. Shuster, taking the language from SAFETEA-LU, corridors can be protected under that language, and are protected: 150 miles of the Pennsylvania Turnpike under that language are protected; 60 miles of the Columbia, Oregon River Highway are protected; 30 miles of Alligator Alley in Florida are protected.

So I leave you there for the moment to think about that language. Thank you, Madam Chair.

Ms. BROWN OF FLORIDA. Mr. Shuster.

Mr. SHUSTER. Thank you, Madam Chairman. My question—well first, just in response to the Chairman, the railroads were deeded public lands in the 1850s through the 1870s. And I believe everything I have seen is that there has been a tremendous repayment to the public good and to the Federal Government by many various ways from shipping our troops for free on the rail system to—by the railroad putting those rail lines where they went through, the value of the Federal lands that were retained by the government increased in value, and then the government sold them or did various things. I don't know if we can continue to make that argument that there hasn't been a significant payback to the Federal Government, to America over the years. So I would make sure we put that on the record, and we need to consider that as we move forward with this.

I don't think anybody is—and in the amendment, it does have protections for railroad stations and significant engineering structures. And my question to Mr. Fowler: Isn't it true section 106 of the process would remain in effect under my amendment? And doesn't that alleviate any of your concerns regarding protecting historic bridges, tunnels and stations?

Mr. JOHN M. FOWLER. As I understand your amendment, that is correct. It would not affect the application of section 106. The 4(f) process of the Department of Transportation Act is a very important historic preservation law in the Federal establishment. And we are supportive of retaining its protections as appropriate.

It is more inflexible than section 106 is, and I would certainly not advocate or support changing that without a very careful examination of what kind of flexibility does exist under the current law to meet the needs that the railroads are putting forward.

Mr. SHUSTER. I think the idea behind the amendment that myself and Mr. Young are putting forward is not to necessarily eliminate the ability to identify corridors, but to limit it and to make it so that it is not on a State-by-State or local-community-by-local-community. Allowing DOT to have that say is, I think, extremely important to the national transportation system and to the safety of that system.

Mr. Simmons, could you talk a little bit about more—or, more specifically, public-private partnerships being hindered? Can you speak—are there specifically things moving forward now or just over the horizon that you are concerned about that this may cause a significant problem?

Mr. SIMMONS. Yes, sir, Mr. Shuster. One of the challenges that we have taken up in our State is to develop a future high-speed rail network. Our role has been to bring forward the environmental documentation, the environmental and preliminary engineering, on a corridor that stretches today from Washington, D.C. through Richmond, Virginia, to Raleigh down to Charlotte, North Carolina. There are other legs of that corridor that extend south to Savannah to Atlanta, east to Hampton Roads.

For us to be able to actually construct on a date, sir, we will need an agreement with freight railroads; in this case, BCSX and Norfolk Southern as well as our own State-owned railroad, the North Carolina Railroad. And that is a challenging group to work with. They are very interested in their business interests, not to the exclusion of history, because each in their own way they celebrate that and work with that.

But to apply designation to the corridor today, we are on the cusp of the designation from Petersburg to Raleigh, and I don't know how far that would extend. And I don't know that I am in a position to provide assurance to our Class I railroads that it wouldn't extend further.

And I think that, while there may be a process in place, an appeals mechanism, it still makes the issue of bringing that to bear fruit, to actually be able to make the investments, to add capacity to those mainline railroads that provide for passengers and freight will be all the more challenging and all the more difficult. I will stop right there.

Mr. SHUSTER. And just one final point that I would like to make, just to point out here that the national historic landmark or the National Register, which the horseshoe curve is on, which of course is in my district, which the ball team, AA Baseball Team, is named after. Norfolk Southern has done a fantastic job of making sure that they have upkept and there has been a facility built there so that railroaders, railroad buffs from around the world, can come see it.

And as I have said, for as long as I know, the Norfolk Southern Railroad has done—and prior to that, Conrail did a great job on preserving that and making sure. And it is part of their mainline. So they have a vested interest in seeing that that part of their system is in good working order and a pleasant experience for all those who go to visit it.

And if the Chairwoman would indulge me for one last comment, today is the final hearing that we are going to be joined by John Brennan who is departing us. He is becoming senior counsel at the Union Pacific Railroad. And it is a loss for the Committee and a great pickup for the UP. And I know that his wife, Maureen, and his two sons, John and James, which I guess they are not departing yet, but they will be moving to Omaha shortly, and I just want to thank John for his knowledge, for his guidance, his support and especially his friendship over the past couple of months.

I became the Rail Subcommittee Chairman and knew something, but didn't have the kind of knowledge that John had. So he gave me a quick education on the nooks and crannies and the details of it. So he has been with the Committee 5 years, and he will be greatly missed. But I am sure we will be hearing from him from time to time when Union Pacific has issues that come before this Committee.

So John, again, thanks so much for your knowledge and your experience.

Mr. OBERSTAR. Would the gentleman yield?

Mr. SHUSTER. Yes.

Mr. OBERSTAR. I would like to join the gentleman, again, in complimenting John on his service to the Committee and his departure for new fields, but fields still within his area of expertise in railroading. He has a very keen understanding of the issues, an in-depth knowledge of railroad matters. And Union Pacific will benefit immensely. And he will join another former Committee staffer over there in the pursuit of the railroad's needs and in an operating capacity. And I compliment you on that. Thank you.

Mr. SHUSTER. And I want to say to the Chairwoman, thanks again for this hearing. I have to excuse myself. But I am going to leave it in the able hands of the former Chairman and someone who has a real interest in this situation. So I yield back to the Chairwoman.

Ms. BROWN OF FLORIDA. Mr. Young.

Mr. YOUNG. Thank you, Madam Chairman. Did I hear myself or did I hear someone else say that they would support the TEA-LU provisions for historical definition that is in the bill; is that correct? Did I hear that?

Mr. OBERSTAR. If the gentleman would yield. I simply cited that the language of SAFETEA-LU on historic preservation gives the—provides the authority to protect corridors. So——

Mr. YOUNG. I think I am hearing correctly. I just have to talk to the gentleman a little later. I appreciate it.

Mr. OBERSTAR. Yes, please.

Mr. YOUNG. Again, Madam Chairman, my interest here is we have the only railroad in the State of Alaska. And there was no alternatives. We don't have a great highway system. It is the main carrier, and we want to improve it and upgrade it and make sure it is safe.

Now, my information is we have had three bridges identified totally unsafe; in fact, should not be used. One is in Indiana and the other one is I believe in Denali; is that correct? Where is the other one? There was three of them. And then the rest of them are under question, if I am not mistaken, of the 50 bridges.

Mr. Brooks, your testimony indicates that designating the Alaska Railroad a historic district adds significantly to project schedules and costs, and hinders safety and advancements and operational improvement. But protection of historic resources is important and is required by law. How do you propose that the amendment ensures the historic resource will continue to be protected that is being offered by Mr. Shuster and myself?

Mr. BROOKS. Well, what we propose is that historic resources, in and of their own right, that have historic value would be protected under the 106 process. The amendment essentially proposes that if there is an adverse effect on a historic resource, it wouldn't have to go through 106—or excuse me 4(f). In addition, the railroad corridor issue, you cast a pretty wide net when you talk about a railroad corridor and you end up bringing a lot of bridges and other infrastructure into play in the 106 process and the 4(f) process that really have little or no historic merit.

Mr. YOUNG. The other thing is, Madam Chairman, this is one of the things that has concerned me. Let's say the railroad, you know, North Carolina or wherever it may be, and you go through this process and the SHPO or one of the historical groups says no. Who do you appeal to?

Mr. BROOKS. Actually, I don't know for sure. I know that our appeal processes have always ended up in the hands of historians, either at the Park Service or our SHPO——

Mr. YOUNG. So you really don't have an appeal to an outside source to say, this is meritorious or is not meritorious?

Mr. BROOKS. Not normally, no.

Mr. YOUNG. The second thing is, it appears to me—and the Chairman's question was—it seems to me the Alaskan SHPO just causes more problems than the national definition. Are they living off of the national definition? Or are they doing this on their own?

Mr. BROOKS. Well, I think the standards under the national historic preservation effort are being expanded widely and applied much more vigorously. For example, although we have had Federal funding for a number of years, we didn't have any need to exercise the 4(f) process before 2002. Since then we have been through it six times. And talking to the timber bridge MOU, which covers the 106 process, you can only have an MOU in place there. Whenever

we do impact the timber bridge adversely, we do have to then follow it up with the 4(f) process. So we are still not out of that for whatever structures we have.

Mr. YOUNG. Madam Chair, I am a little concerned here because we have an individual on the SHPO board that—we have another historical barrier in the State that is being proposed to be adversely affected. And it would seem to me that there was an indication that there had been some transfer of dollars into the State program. There may be not as much of an objection. That goes back to my—there should be, somewhere along the line, people have a right to appeal outside of those interested in that issue. See, I want to believe in protecting historical things. But when I have a railroad that has to move all my troops and move my gravel and move my fossil fuels and move my food and move everything, the only real form of rail transportation, I don't want to see another agency within the Federal Government has been codified by the Congress to say, oh, no, you can't do that, but maybe we will help you out.

I don't think that is fair. I think there ought to be a way that there is an outside source to say, all right, this really is not going to hurt the historical aspects of it. It is not going to change the railroad adversely, historically, and maybe we ought to go forth with it. I don't see who they appeal to.

I am going to ask my counsel to look into this because I think that is crucially important in this process, that we know that there is somebody who could make that decision outside of historians. Why should the historians, when you want to do something, have the right to say no and stop the process of your rail from running? That is the thing I don't quite understand.

Any one of the historians want to comment on that? Mr. Fowler, can you do that?

Mr. JOHN M. FOWLER. No, sir.

Mr. YOUNG. You can't do that. You have not done that and no one else has done it.

Mr. JOHN M. FOWLER. If I am reading your question correctly, the question of what is or is not historic is a decision that is made by the people that have the authority and the responsibility and the expertise to determine historic significance. So in the section 106 process, it is the State Historic Preservation Officer and then the keeper of the National Register.

Mr. YOUNG. May I interrupt? Having said that, we want to make an improvement. We want to replace a bridge, and that State Historical Officer says, no, you can't do it. Where does the railroad go?

Mr. JOHN M. FOWLER. First of all, the State Historical Officer cannot say no, you cannot replace the bridge. Under section 106 if the State Historic Preservation Officer says this property is eligible for the National Register, that then requires the Federal agency that is providing the money—if the railroad is doing it, but with its own funds, there is no—there is no Federal law involved. There is no application of section 106 because there has to be some Federal permission or Federal assistance.

Mr. YOUNG. But again, going back to the Alaska Railroad—Madam Chair, my time has run out. Alaska Railroad is difficult to change that, because it was a Federal railroad, but it still was transferred to the State.

Mr. JOHN M. FOWLER. Correct.

Mr. YOUNG. Now, who has the responsibility? Because there were Federal dollars involved, so that puts it under the jurisdiction of historical definition. And it goes back to, again, Mr. Brooks wants to put a bridge in. The State historical or the the Federal historical people say no. What recourse do they have?

Mr. JOHN M. FOWLER. Well, again, as I understand it, the current Federal interest in the Alaska Railroad is only if the Federal Transit Administration or the Federal Railroad Administration provides funding, or if perhaps they need a Corps of Engineers' permit in order to replace a bridge.

Mr. YOUNG. See, then they are covered, because they are the Corps of Engineers. That means they are under the Federal jurisdiction. And Mr. Brooks's railroad can't build a bridge if you say no.

Mr. JOHN M. FOWLER. Well, no, because the Corps of Engineers has to consider the impact of giving the permit on the historic property. But in the end, the Corps of Engineers can say, it is more important to give this permit to replace the bridge, and there is nobody—the Advisory Council, the State Historic Preservation Officer, the Secretary of Interior, or the National Park Service, no one can say no to that. That is a decision of the Corps of Engineers.

Mr. YOUNG. Now we go through this process and we have a building season in Alaska of 90 days. We are set off more than 90 days. The Chairman brought this up. We are set off a year, and the train bridge collapses. Who has a responsibility? Is it Mr. Brooks, Alaska Railroad, Historical Society, Corps of Engineers? Who has the responsibility for the 150 people at the bottom of that canyon because the bridge wasn't fixed because it could possibly be historical? Who is responsible?

Mr. JOHN M. FOWLER. I don't quite feel equipped to answer that question, sir.

Mr. YOUNG. Well, you mean you are not responsible, then, and you held it up.

Mr. JOHN M. FOWLER. No, because——

Mr. YOUNG. Or SHPO held it up.

Mr. JOHN M. FOWLER. First of all, I would suggest if one spends all their time debating whether or not the property is significant, that that often is the major reason that the process is protracted.

Mr. YOUNG. We don't disagree with the idea of it being historical. We disagree with the ability not to improve it so it is safe. That is all we are trying to do. My wife just walked in and told me to be quiet. So go right ahead.

Mr. JOHN M. FOWLER. The process, sir, can work efficiently if people sit down and say, okay, this is a historic property, and now let's see what we can do with it. And the Federal agency that is funding or approving the project is in control of the time. If the Federal agency says we don't want to talk anymore about this, the SHPO is being obstructionist, they can terminate the process, they can get advisory comments from the Council, and then they can go forward and approve the project.

Mr. YOUNG. That is a dream world. If one person, one individual in SHPO says no, the railroad cannot fix that bridge. And that is what we are trying to address in my amendment. You know that.

That is exactly what we are trying to do. It is what we did in the highway bill. We are going to try to apply that, because if we don't do it, then you have impeded the process of safety, ability to expand the railroad. Not destroying historical things. And that is not you personally. But just keep in mind, our goal is to make sure the railroad runs right, and on time. Yield back.

Ms. BROWN OF FLORIDA. Thank you. Mr. Fowler—and I guess anyone who wants to answer this question—over the next 10 years, there is going to be a large increase in freight rail, shipment, passenger. How do you suggest we balance preserving our national heritage and preparing the future needs of this Nation?

Mr. JOHN M. FOWLER. Well, Madam Chairman, we have already started to address that in case-by-case situations with regard to lines that require tunnel enlargement for clearances for modern freight equipment and so on. I would suggest that the Federal agencies that are responsible for funding and overseeing this, the Federal Rail Administration, the Federal Transit Administration, work with the Advisory council, the National Conference of State Historic Preservation Officers and the railroad industry and deal with this in a programmatic way, much the way we have dealt with the Interstate Highway System.

We are concerned as much as anybody else is in having an efficient transportation system and we don't want preservation to be an impediment to that.

Ms. BROWN OF FLORIDA. You did not answer Mr. Young's question, or I didn't understand the answer to the question. He is indicating that what procedure is in place when one person is blocking—I mean to me, safety is number one.

So the question is, what procedure is in place? If you have a facility that is structurally, physically, not safe and you are running trains on it, and then you have a process that is holding up the construction—you know, I know that on another Committee I am on, VA, we can completely fund a facility, and it takes the private sector 16 months to build it, and it would take us 5 years because of the different agencies.

How can we have a one-stop process to expedite the time? I guess that is what we are asking here.

Mr. JOHN M. FOWLER. All right. Well, first, in emergency situations there are exemptions from section 106 in order to meet an emergency situation, such as the imminent threat to safety for a bridge that is substandard. But as I was saying, under the section 106 process, the Federal agency—and there has to be a Federal agency involved—if it is a funding agency, such as FTA in the situations that I understand, they are in complete control of the process. They can say—the SHPO's role is purely advisory. The SHPO says it is historic, and the FTA says it is not. The FTA can move forward based on that.

If the SHPO says, I don't want you to tear the bridge down and the FTA says, we don't agree with you, they can terminate this consultative process. They can get advisory comments from my agency that have to be delivered within 45 days of a request. And then it is up to the Secretary of Transportation to decide what to do with it. And the Secretary can say, rail safety is more important. It would be nice to save this bridge, but we are not going to

do it. It. Thank you very much, ACHP, for your comments. We are moving forward.

Ms. BROWN OF FLORIDA. Mr. Little, you want to comment on that, the question?

Mr. LITTLE. I am sorry.

Ms. BROWN OF FLORIDA. Did you hear the question?

Mr. LITTLE. No, I did not, ma'am.

Ms. BROWN OF FLORIDA. Did you hear my question?

Mr. LITTLE. No, I did not.

Ms. BROWN OF FLORIDA. Okay. What I said was, over the next 10 years it is going to be a real conflict between the passenger rail and freight rail as far as the increase in ridership. And how do we balance the two, preserving historic and moving the system forward?

Mr. LITTLE. The best solution to that in my opinion is the one that we have used in my State and around the country for several decades. And that is the administrative programmatic approach. Under the programmatic approach, you try to avoid project-by-project review and instead look at entire programs. Those entire programs may involve large geographic areas, like a corridor, or they may involve multiple projects that are highly repetitive and highly predictable in terms of what the nature of the project is and what the nature of the solution to the historic preservation problems are.

What that programmatic approach does is to essentially allow the railroad agency and railroads in this case to self-monitor and carry out the preservation planning processes itself. Now, they have got to do it according to decent standards. But the agency, the railroad agency does the work itself and only comes to the State Historic Preservation Officer or the Advisory Council and historic preservation for problems that cannot be resolved in accordance with an agreement.

Those agreements—in my State we probably have right now 50 such programmatic agreements with things from our housing agency to our transportation agency. They work. But the agency implementing them has to take the process seriously and has to own the preservation planning process. We don't want to be the preservation police. We don't have the time or the money to look over agencies' shoulders. And if we can get them to do it themselves, that is what we want.

Ms. BROWN OF FLORIDA. Ms. Fowler, what impact would the Shuster amendment have on the Rail-to-Trails program? It is a very popular program in my State of Florida.

Ms. WESLEY FOWLER. I think the impact would be that because of the way railroads under Federal law are allowed to abandon corridors, they can move corridors through—they can put a system diagram map and say they plan to abandon it 2 years into it or what have you, or they can discontinue service on it and not provide any service and then abandon in a 30-day period, seeking what they call an exemption.

And our way of slowing down that process enough so that public agencies have an opportunity to put together funding packages, build community support, turn to Congress or their states for TE money, whatever, it prevents the dismantling of those key features.

We talk about a trestle as if it were just a historic preservation facility. It is also the way you get from one part of the corridor to another part of the corridor. The tunnel is how you get from one part of the corridor to the other part of the corridor. If those facilities fall into disrepair or are allowed to be dismantled, if that stone, for instance, on the Stone Arch Bridge was allowed to be sold off to private sector because the railroad owned it and so they had a good market for it, those features, you can't separate the facilities on the corridor from the corridor itself. They are a part of the corridor. So you need to keep them intact long enough for public agencies to make a decision as to whether they want to acquire that corridor or not.

Ms. BROWN OF FLORIDA. Is this a coincidence about the two Fowlers here today?

Ms. WESLEY FOWLER. Well, we are not sure.

Ms. BROWN OF FLORIDA. Okay. I am going to have to check with the staff on this one.

Mr. Brooks and Mr. Fowler, would you all be willing to sit down and discuss how we can solve this problem before this bill comes to the floor?

Mr. JOHN M. FOWLER. On behalf of the ACHP, we would be delighted to, Madam Chairman.

Ms. BROWN OF FLORIDA. How about you, Mr. Brooks?

Mr. BROOKS. Yes, we are very interested in getting the problem solved, but we also feel like we have an immediate issue.

Ms. BROWN OF FLORIDA. Mr. Young. Did he leave? Mr. Oberstar.

Mr. OBERSTAR. I didn't understand the last part of your response to Ms. Brown, Mr. Brooks. You said we would, but—what?

Mr. BROOKS. We feel like we have an immediate issue. We do have a number of bridges that are out there in need of replacement. And although we have an agreement on timber bridges for the 106 process, we do not have anything in place for 4(f), and that is an impediment to our work.

Mr. OBERSTAR. Well, whether you want to sit down and talk about a solution or not is up to you. But the Alaska Railroad can ask the keeper of the National Register to determine whether or not the railroad is, in fact, historic. And the railroad has not asked for this determination as far as I have been able to determine. So are you aware of that authority?

Mr. BROOKS. Yeah. We are aware that we can ask the keeper if the railroad is a historic entity. There is a process involved. The de facto position of our SHPO is that we are historic, and that is the way we have been treated. When we got to the example today of bridge 432.1, we had the opportunity to pursue that. Assuming the determination of adverse effect would have been upheld, we would have had to pursue section 4(f) anyway, so because we need to repair our bridge, we simply went directly to 4(f).

Mr. OBERSTAR. Well, you are really not answering the question whether you want to talk further, so you have got an immediate problem; but your immediate problem is about to be resolved one way or another. I can't imagine that the Interior Department will reject the claim of no feasible prudent alternative, as your filing proposes, to replacing the bridge. And you will be able to go ahead

with it. So it is up to you whether you want to sit down and talk about things and specifics.

But let me—there are appeals. There are opportunities. And, Ms. Merritt, I would like you to expand upon that. There is a claim on the part of the Alaska Railroad, and implicitly by North Carolina, that there is no appeal from the decision of one person. But there is an appeal process throughout the whole historic preservation. Describe this for us.

Ms. MERRITT. To elaborate on what Mr. Fowler said, when the question is whether a resource is eligible for the National Register of Historic Places, there is an appeal to the keeper of the National Register in the National Park Service. When the question is whether the bridge should be replaced under section 4(f), the final decision belongs to the Federal agency in the Transportation Department, Federal Transit Administration, or Federal Railroad Administration, whoever is providing the funding. And the fact that a resource is determined eligible for the National Register does not determine whether it can be replaced or altered.

As Mr. Fowler said, that just requires consideration of alternatives but it doesn't prohibit replacement or alteration. And the programmatic agreement for replacing the 57 timber bridges on the Alaska Railroad is a perfect example of that, of how section 106, even when resources are determined to be historic, does allow for upgrades and needed improvements.

Mr. OBERSTAR. Mr. Brooks, do you disagree with that?

Mr. BROOKS. No.

Mr. OBERSTAR. Mr. Simmons?

Mr. SIMMONS. Mr. Chairman, I do not agree that there is process. There is, in fact, process.

My point is, as applied to a corridor as opposed to a distinct resource, such as a bridge or a facility or a structure, that that then can readily—in our case, it transcends two States. I think that because our corridor transcends six or seven States as it goes from Washington to across the South and Southeast, that we are on the cusp of a Federal issue. It is one that goes beyond the issue of whether the State Department or Transportation is in conversation and working hand in glove with the State SHPO office. I think we are, and we have demonstrated that.

But when you look at the broader application of this, that is the challenge that I foresee and would appreciate some guidance and facility to make that happen so we can construct——

Mr. OBERSTAR. I gather from your statement, not from Mr. Brooks, you are not opposed to—in principle—to having portions or specific items, aspects, facilities considered historic. You are concerned about the process you have to go through that takes so long to get there. Is that largely right?

Mr. SIMMONS. That is very close, Mr. Chairman. I will make the distinction. I will use the example that we have between Raleigh and Petersburg or Raleigh and Richmond where we are doing work today. We are studying, analyzing a corridor that is about 1,000 feet wide. We have identified every structure in it, we have documented all of that. In addition to that, we have been asked to document and we have documented the corridor.

But it is the corridor aspect that I find most challenging, and I think potentially could be an additional difficulty for us to ever build something.

Mr. OBERSTAR. In the current law, and then-Chairman Young and I spent a great deal of time on this—and, particularly, I undertook to negotiate over a period of 6 or 7 months with all the various parties on project streamlining to simplify the process. And one of these was with respect to historic sites. And the language of the current law says quote, with respect to historic sites, the Secretary may make—Secretary of Transportation may make a finding of de minimis impact.

I think this is very important for your purposes. Only if the Secretary has determined, in accordance with the consultation process required under the National Historic Preservation Act, that the transportation program or project will have no adverse effect on the historic site, or there will be no historic properties affected by the program or project.

The finding of the Secretary has received written concurrence from the applicable State Historic Preservation Office or Tribal Historic Preservation Officer, et cetera, et cetera, participating, and the finding of the Secretary has been developed in consultation with parties consulting as part of the process. That is current law. Do you have a problem with that?

Mr. SIMMONS. No, sir.

Mr. OBERSTAR. Mr. Brooks?

Mr. BROOKS. Could you put the first part of that question together again?

Mr. OBERSTAR. The first part of the question is, I read all the current language of the law. And the question is, do you have a problem with applying current law to your current project?

Mr. BROOKS. And I am sorry. Could you read the first couple of lines again, please?

Mr. OBERSTAR. Oh, my goodness. It is a long section here. The Secretary may make a finding of de minimis impact if the Secretary has determined, in accordance with the consultation process required under the National Historic Preservation Act, that the transportation program or project will have no adverse on the historic site, or there will be no historic properties affected by the transportation program or project.

Mr. BROOKS. The problem we have with that is the effect of the Historic District gathers in features of the railroad, bridges, tunnels, buildings that wouldn't—that have no historic merit on their own. Their merit is because they are part of the Alaska Railroad Historic District. The de minimis finding, if we do something that impacts one of those contributing elements, then there is a finding of adverse effect, and it does trigger the 4(f) process.

Mr. BROOKS. That is the problem that we have.

Mr. OBERSTAR. We are not going to overturn current law, I will tell you that. We are not going to go back and rewrite the Federal Highway Act. So you need to find something that speeds up; sit down and talk to each other, talk to us, talk to Mr. Fowler, talk to Ms. Merritt and find something that speeds up this process, and do it fast because we are going to bring this bill to the House floor next week.

Mr. BROOKS. We would be happy to do that.

Mr. YOUNG. Mr. Chairman.

Mr. OBERSTAR. I yield to the gentleman.

Mr. YOUNG. I think we are on the right road here, and hopefully you and I will be able to sit down with the Chairman, Madam Chairman, because you brought up a good point about where we are going to be. And it appears to me that SHPOs caused us the most problems, and they are nicely recognized. It is a State person that has been the biggest challenge. And somehow we have to work around that so that we can upgrade the railroad wherever we possibly can for safety purposes, because it will expand if we are allowed to do that, because I think we would be doing a disservice.

My amendment is very simple, as you know. All it does is adopt the highway safety bill is all it does, and the TEA-LU bill. It doesn't add anything else to it. And I want to make sure that we do protect the historical sites, but when it comes to a wooden bridge that is not safe, that goes back to—and has been decided that not by the railroad, by other people, and we have got to go through the Corps, and we have got to go through da, da, da, and I have one accident, I again ask the question, who is liable? Are we liable because we didn't doing do something? Is Mr. Fowler liable? Mr. Brooks? I can tell you there is going to be a lawyer making sure someone pays.

Mr. OBERSTAR. We don't want to let it go to that.

Mr. YOUNG. We don't want it to go there, so I am going to make the suggestion that the three of us sit down and see if we can't arrive at a solution to make sure the railroads have the ability to keep growing and protect the historical sites. That is our main goal. And we can do that if we do it. And I have worked with the Chairman and the Chairman of the Full Committee and the Chairman of the Subcommittee for the last 6 years, and I think we can solve this problem.

I yield back.

Mr. OBERSTAR. I think that we are on the right course here, and I know that preservation groups are concerned about getting the Secretary of Transportation to be the final authority on this matter. But we do have existing law, and we do have language that was thrashed out at great length and with great effort and in great good will on both sides. So let's see if we can work out something between now and Monday morning. Monday noon is when we have to file whatever documents you have to file with the Rules Committee in order to bring the bill to the floor. So you talk, we will talk, and we will get this done.

Madam Chair, thank you.

Ms. BROWN OF FLORIDA. Yes, sir. Let us add into this discussion Mr. Brooks, Mr. Fowler, Mr. Simmons and whoever else need to be in the room. My recommendation, go in the room, lock the door and don't come out. Failure is not an option, and we will all be happy if we can move forward and we can just work it out and not have to have a problem on the bill on Monday when it is time to file our bill.

I hope I have the commitment of all the parties that we are going to work it out, and we want to make Mr. Young happy and Mr. Oberstar; then I will automatically be happy.

I want to thank the witnesses for their testimony and the Members for their questions. Again, the Members of this Subcommittee may have additional questions for the witnesses, and we ask you to respond to these in writing. The hearing record will be held open for 14 days for Members wishing to make additional statements or to ask further questions.

Unless there is further business, this Subcommittee is adjourned. Thank you, very much. Thank you.

[Whereupon, at 4:50 p.m., the Subcommittee was adjourned.]

Statement of the Honorable Corrine Brown, Chairwoman
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on the Historical Preservation of Railroads Property and Facilities
June 5, 2008

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order.

The Subcommittee is meeting today to hear testimony on the Historical Preservation of Railroad Property and Facilities.

Today's hearing is in response to an amendment offered and withdrawn during Full Committee consideration of the Passenger Rail Investment and Improvement Act of 2008. The amendment would prevent Federal historical protection for an entire railroad line or corridor in response to claims by the Alaska Railroad and the North

Carolina Department of Transportation that the historical protection process has led to costly delays in capital improvements with no benefits to historical preservation.

I believe the committee's goal should be to ensure that any action it takes respects the valuable process of protecting our Nations heritage while ensuring a fair process to rail providers that allows them to adapt to future needs without undue costs and delays.

The testimony of the Advisory Council and the National Trust points out that there are administrative remedies to resolve the problems raised by both parties. This hearing has brought the problems raised by the Alaska Railroad and

North Carolina to the attention of the Advisory Council. I think there is a willingness to resolve these concerns administratively, and I would encourage all the parties involved to work towards an equitable solution to any policy disagreements that are raised.

We must ensure that we are not looking for a solution to a problem that may not exist. Prior to the markup, the issue of historical preservation and its impact on the rail system was never raised with me or the committee, and we haven't heard from other rail providers facing similar problems.

However, I look forward to learning more about these problems from the witnesses appearing

today, and pledge to work with my colleagues to ensure that the Alaska Railroad, the state of North Carolina and all other rail providers are being treated fairly.

I want to thank our panelists for agreeing to join us today. I look forward to hearing your testimony.

Before I yield to Mr. Shuster, I ask that Members be given 14 days to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses, including a statement by the Preservation Action.

Without objection, so ordered. I now yield to Mr. Shuster for his opening statement.

Statement by Congressman Jerry F. Costello
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on the Historic Preservation of Railroads and Facilities
June 5, 2008

Thank you, Madame Chairwoman, for calling this hearing on historic preservation of railroads and facilities. I would like to welcome today's witnesses.

Historic Preservation designations are important to preserving significant historical events or lives of historically significant people. Currently, the National Register indicates that roughly 2300 rail facilities are listed on the Register, many in my home state of Illinois. That number could grow – however, there is no way to determine how many additional facilities would be protected unless there was a proposed Federal action affecting the facility.

I understand changes were made in SAFETEA-LU to include special provisions governing how the Interstate Highway System would be handled in historic preservation designations and now others wish to do something similar for railroads and facilities. I am interested in learning more about the

legislative changes being proposed by our witnesses and the possible affects of such action.

Again, I look forward to the testimony of today's witnesses.

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
Subcommittee on Railroads

"Historic Preservation of Railroads and Facilities"

June 5, 2008 – 2:00 p.m.
Room 2167, Rayburn House Office Building

Opening Statement of Congressman Elijah E. Cummings

Madam Chair:

I thank you for calling today's hearing to enable us to examine the historic preservation of railroad infrastructure.

I believe that it is imperative that Congress approach the issues before it by seeking balance – and the need for balance applies very aptly to the issue we are considering today.

A unique balancing act must be performed to ensure adequate preservation of historic railroad properties while not impeding the ability of railroads that are still active and growing transportation systems to upgrade and modernize infrastructure as needed.

Of particular concern is ensuring that when entire rail corridors are designated as "historic," such designation is broad enough to ensure that the unique structures and features of the corridor are preserved without imposing undue financial burdens and time constraints on corridor operators – particularly for portions of the corridor that are not necessarily historic sites.

I look forward to the testimony of all of the witnesses before us today – and particularly that of Mr. J. Rodney

Little, the Historic Preservation Officer for my State of Maryland, who will be testifying on behalf of the National Conference of State Historic Preservation Officers.

The State of Maryland – and the 7th Congressional District, which it is my honor to represent – are home to some of the oldest railroad infrastructure in the nation.

The Port of Baltimore was the eastern terminus of the B&O Railroad – which was chartered by the State of Maryland in 1827 and became the first common carrier railroad in the United States.

The oldest railroad station still in existence in the United States, the B&O station in Ellicott City, Maryland, is also located in the 7th District.

The railroad has played a critical role in the development of Baltimore, the State of Maryland, and indeed the entire United States – and its unique structures, such as the thousands of depots that were once the gateways to towns across the country – are immediately recognizable features of our distinctive American landscape.

However, we must ensure that as we preserve infrastructure, we also create space to allow the modernization of infrastructure still in-use. I believe that if all parties keep an eye toward the balance of which I spoke earlier, these are mutually compatible and achievable goals.

Thank you – and I yield back.

Testimony of Mr. Thomas E. Brooks
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(907) 265-2456

Before the House Subcommittee on Railroads, Pipelines and Hazardous Materials
House Transportation & Infrastructure Committee
2167 House Rayburn Building

Hearing:
Historic Preservation of Railroad Property and Facilities

June 5, 2008
2:00 pm

Statement of Mr. Thomas E. Brooks
Assistant Vice President for Projects and Chief Engineer, Alaska Railroad
Subcommittee on Railroads, Pipelines and Hazardous Materials
U.S. House Transportation & Infrastructure Committee
June 5, 2008

Thank you Chairman Brown, Chairman Oberstar, and members of the subcommittee for holding this hearing and inviting me speak with you today on behalf of the Alaska Railroad Corporation. I also would like to thank Rep. Shuster for offering the amendment at the markup, and Rep. Young for his leadership on bringing the issue to the attention of the committee.

My name is Tom Brooks, and I am Assistant Vice President of Projects and Chief Engineer at the Alaska Railroad. The Alaska Railroad has a 500-mile-long mainline running from the ports of Seward, Whittier and Anchorage to the interior city of Fairbanks. We operate a year-round full service passenger and freight railroad. The Alaska Railroad carried over a half-million passengers in 2007, and has extensive freight operations in interstate commerce. Because of our service to five military bases, we have been designated by the Department of Defense as a Strategic Railroad.

The Alaska Railroad was built and operated by the U.S. government from 1914 until it was sold to the State of Alaska in 1985. We are proud of its history and we actively support historic preservation in numerous ways that are detailed in the backup materials. However, the effect of expansively applied historical laws and regulations imperils our ability to maintain safety. It also compromises the operational and business agility vital to our railroad's mission of stimulating state economic development. We support an amendment along the lines of the Shuster Amendment that was offered and then withdrawn at the full committee markup pending this hearing.

Let me start by sharing a current problem that illustrates the dilemma very well-- our bridge "432.1". This 160-foot-long bridge spans a small creek in a remote location; it is ten miles from the nearest road. Two separate independent historians have determined this bridge has no historic merit on its own. However, it has been, in practical effect, declared historic by Alaska's State Historic Preservation Officer, or SHPO, merely because it is part of the Alaska Railroad. This has triggered the extensive bureaucratic process meant to preserve and protect historic structures.

The foundation of this bridge is failing badly and we want to replace it this year. We can't. We are currently passing around documents between the Alaska Railroad, the Federal Transit Administration, the National Park Service, and the Alaska SHPO. We expect to obtain the required approvals so that the replacement can be completed in fall 2009. In the meantime, we've got to get 150,000 passengers, a bunch of freight including 700 million gallons of fuel oil, and critical military equipment safely over that bridge. We believe we can do it, but it is expensive and so unnecessary. While we are a year-round railroad, Alaska has a short construction season, from May through September because of winter freeze-up, which emphasizes the importance making timely decisions.

We submit that this is a misapplication of public process that squanders federal resources and public funds. There is no reason for this delay. This problem is created by overzealous attempts to identify the Railroad as a single "historic district". This designation automatically triggers historical protections for mundane railroad features that lack historic merit on their own. Bridge 432.1 represents the sixth time we have been through this process since 2002. It is expensive and delays our efforts to improve safety and efficiency, and to serve our customers.

The Shuster Amendment will ensure that historic preservation standards continue to be applied to railroad features with historical merit in their own right – not because they are merely part of a railroad historic district. This amendment would provide the same relief to railroads that was afforded to the Interstate Highway System in 2005 through SAFETEA-LU Section 6007. Like the Interstate System, railroads have been evolving since their inception and continue to do so, having been constructed, expanded, and upgraded to serve national transportation needs. Their integrity depends on continuing maintenance and upgrades so that they can continue to operate and move passengers and/or freight efficiently.

The Alaska Railroad is a critical component of our state's transportation infrastructure and must continue its mission as an economic tool for development as mandated by Congress in the Alaska Railroad Transfer Act (Public Law 97-468). Without the Shuster Amendment, there is an immediate danger that our entire railroad corridor will, in practical effect, be treated as a historic district, as detailed in one of the exhibits being submitted with my testimony. Safety improvements and routine maintenance of even mundane features such as Bridge 432.1 are incurring undue delay and costs, and the problem will get even worse in the future if the railroad corridor is either officially declared a historic district or, as is currently the case, simply treated as if we are. While avenues exist to appeal historical determinations, they are made to bodies like the Advisory Council on Historic Preservation or the Keeper of the National Register. These entities are firmly grounded in historic preservation and have a far different mission from running a safe transportation system. In addition, project delay is inherent in any appeal process. Delay, in most cases, will equal additional costs and continued deterioration of infrastructure.

In closing, we will gladly continue to support efforts to preserve Alaska's history and that of the Alaska Railroad, but we must also ensure the safe operation of the railroad. Alaska is

America's last frontier, and it is the Alaska Railroad that provides economical access to a significant portion of that frontier. Through the Shuster Amendment, we will continue our historic preservation efforts, focusing them on truly deserving properties, while moving ahead with our mission of safety and service.

Thank you for the opportunity to speak with you today. I'd be happy to answer any questions.

List of Exhibits

Exhibit 1 Examples of Alaska SHPO's Intent to Identify the Alaska Railroad as a Historic District

Exhibit 2 Bridge 432.1 – Example of Alaska Railroad Historic District Problem

Exhibit 3 Details of the Historic Preservation Issues on the Alaska Railroad

Exhibit 4 Alaska Railroad Section 4(f) Submittals

Exhibit 5 Alaska Railroad Historic Initiatives

Exhibit 1
Examples of Alaska SHPO's Intent to Identify the Alaska Railroad as a Historic District

SHPO's August 9, 2007 letter (regarding Broad Pass project)

In order to expedite reviews of railroad undertakings, it is imperative to evaluate the railroad as a potential historic district and to identify the features found throughout the corridor. Please update this office on the progress made to identify cultural resources related to [the] railroad corridor.

SHPO's November 20, 2006 letter (regarding Alaska Railroad Historic Context and Survey)

In April 2006 our offices met and discussed compliance with National and State Historic Preservation laws. At that meeting, Commissioner Michael Menge, Department of Natural Resources, and Pat Gamble, President and CEO of the Alaska Railroad Corporation, decided that the Alaska Railroad Corporation will develop a railroad historic district context and begin the process to list the district in the National Register of Historic Places.

NOTE December 1, 2006 response to that letter from Railroad President Pat Gamble

I see from your letter that I need to set the record straight regarding the meeting you mentioned, which took place on April 20, 2006 between Commissioner Menge and me. Let me be very clear. The Alaska Railroad's purpose going into that meeting was exactly the opposite of your characterization ... we agreed to create an inventory of individual historical items for the express purpose of not having to declare a railroad historic district, an alternative which would most certainly stifle the tempo of safe operations, maintenance and business. . . .

The correct expression of our intent was that we would agree to list key historic railroad elements eligible for inclusion in the National Register of Historic Places if qualified expertise determined that they warranted such special recognition. This solution was acceptable to the Railroad because it better accommodated the operational imperative for the Railroad to continue its broad based 24 hour by 7 day a week operations and maintenance in an unfettered manner on behalf of the State of Alaska.

SHPO's December 1, 2005 letter (regarding Bridge 233.3 replacement)

Bridge 233.3 (TAL-0122) is a contributing feature to a potential historic district.

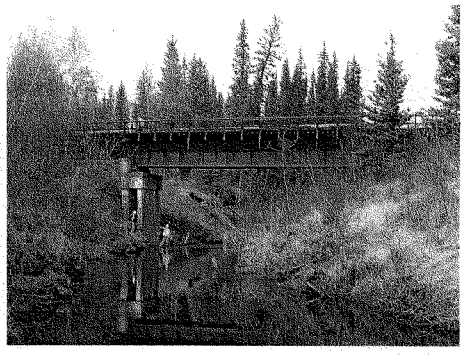
SHPO's June 19, 2002 letter (regarding repair of two Alaska Railroad bridges)

The Alaska Railroad Corporation previously reported to the Alaska State Historic Preservation Officer that the Alaska Railroad Corporation is in the process of preparing a historic context study and survey of all railroad properties. The survey will evaluate the historical significance of the Alaska Railroad and identify features of the Alaska Railroad that contribute to its significance.

NOTE September 30, 2002 response from Railroad Chief Engineer Tom Brooks

At our meeting in January 2002, it is our recollection that we agreed to conduct an historic survey of the Alaska Railroad, including an inventory of the various types of facilities owned by ARRC, such as bridges, buildings, and possibly other structures. This survey would establish the historic context for the railroad, which is important for evaluation of the various railroad facilities to assess their eligibility for the National Register of Historic Places (NRHP). . . . ARRC representatives did not agree to evaluate the historical significance of the Alaska Railroad, which suggests that we would provide a determination of eligibility of the Alaska Railroad for the NRHP.

Exhibit 2
Bridge 432.1 – Example of Alaska Railroad Historic District Problem



Summary: The foundation under this bridge is failing. Because it is part of a potential "Alaska Railroad Historic District", replacement has been delayed a year while the historical preservation process is completed. During that period, 150,000 passengers and about 700,000,000 gallons of fuel will pass over the bridge. The bridge will require close monitoring to ensure safety, and a service interruption is possible if interim repairs are needed.

Additional Information: The bridge spans a small creek in a remote area, with the nearest road access about 10 miles away. The bridge was built in 1925 and modified in 1950 using typical railroad construction. Unfortunately, the designers did not properly address the frozen soils, and the foundation is failing. Engineering investigations in 2007 revealed the state of deterioration was worse than expected -- it is in need of immediate replacement.

Rail traffic over the bridge in 2007 included 150,000 passengers and about 700,000,000 gallons of fuel. Proper functioning of this bridge is essential to the State of Alaska, the Alaska Railroad, and the Department of Defense.

2003-5	Bridge 432.1 had an initial historic evaluation by independent historians working on an Alaska Railroad Historic Bridge Survey. It was not identified as historic, but Alaska SHPO requests additional information.
Dec. 2007	Second historian does separate evaluation, also indicates bridge is not historic.
March 2008	Federal Transit Administration (FTA) determines bridge is not eligible for the National Register, requests Section 106 concurrence from SHPO. Indicates beneficial reuse of the steel spans is part of proposed bridge replacement project. If a suitable railroad purpose for the spans is not identified, they will be offered to other entities for reuse (e.g., pedestrian or vehicular bridge)
April 2008	SHPO does not concur with FTA finding, determines project will have an adverse effect because of the bridge's association with the Alaska Railroad. This effectively eliminates completion of the project in 2008.
April 2008	Railroad/FTA prepare document for "Section 4(f)" of the 1966 Transportation Act. Must show there is "no feasible and prudent" alternative to replacing the bridge.
April 2008	Section 4(f) forwarded to Department of Interior/National Park Service for review. Response is expected in late July.
August 2008	Approval expected from FTA to begin purchase of materials. Delivery expected mid to late winter, 2009. Construction expected to begin in spring, 2009.

Burdensome delay and higher costs, with no additional public benefit.
Completion of construction for time-critical safety improvement project is now fall 2009. No public benefit to finding bridge eligible for National Register – mitigation requested by SHPO is the same as originally offered by Railroad as part of project.

Exhibit 3
Details of the Historic Preservation
Issues on the Alaska Railroad

When an element of the Alaska Railroad is formally identified as historic, protections are triggered under Federal laws, particularly the National Historic Preservation Act and the Transportation Act of 1966. The issue here, and reason we are seeking protection, is that historic designations are being widely and expansively made. Specifically, historians are attempting to designate the Alaska Railroad corridor as a large historic district, trigging an extensive preservation bureaucracy. This bureaucratic process would apply to many minor and mundane features of the Railroad, inhibiting our ability to respond to change. It is important that we be responsive to change, both to safely maintain the Railroad, and to better serve our customers.

The Alaska Railroad is an important part of Alaska's history. We celebrate our history and actively support historic preservation. We absolutely agree that some components of the Alaska Railroad are truly historic properties. Bridge 264.1 on the Susitna River was listed on the National Register in 1977. We supported the listing of our Anchorage Depot in 1999. Eight other railroad properties formerly owned by the Alaska Railroad are also listed on the National Register. In addition, over 50 other Alaska Railroad properties, including a third of bridges, have been determined to be eligible for listing on the National Register of Historic Places.

To further reinforce our commitment to historic preservation, the Alaska Railroad has sponsored or currently sponsors a number of historic initiatives, as summarized in Exhibit 5 of our materials. To highlight a few of these endeavors -- we sponsor a tour guide program, where Alaska high school students provide historical information to our passengers; we have extensively archived our historical records to the National Archives; and we have made many donations of historical buildings to local governments and historical materials and equipment to local museums for public exhibits on the history of the Railroad.

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their actions (including grants, licenses, and permits) on historic properties (Section 106). The Alaska Railroad relies on federal funds, particularly from FRA and FTA, to bring the railroad back to working order after many years of neglect under federal ownership. In accordance with the NHPA implementing regulations (36 CFR 800), consultation with the Alaska State Historic Preservation Officer, or SHPO, is required for these federally-assisted undertakings.

What concerns the Alaska Railroad is that the SHPO considers the entire Alaska Railroad corridor to be eligible for inclusion on the National Register of Historic Places as a historic district, and supports such a designation. Correspondence over the past several years with SHPO reveals this intent as demonstrated in Exhibit 1. Despite federal agency determinations that specific railroad resources are not eligible for the National Register, based on surveys conducted by cultural resource professionals, SHPO did not concur with many determinations and continues to evaluate most of our projects based on a potential Alaska Railroad historic district. SHPO has implied that nearly all our buildings, bridges, sidings, and other properties not significant enough to be individually eligible for the National Register, are eligible as

contributing elements to a potential railroad historic district, solely due to their association with the Alaska Railroad.

As an example, we proposed extending an existing ordinary rail siding 2,000 feet to improve our operating flexibility. An archeological and historic survey revealed no adverse impacts from this mundane project. The SHPO did not concur and required an additional evaluation of the project because the SHPO believed that the siding and other features were historic solely due to being part of the Alaska Railroad. This added four months of delay to the project – which is considerable given Alaska's unique construction constraints due to its short construction season (May–September) before ground freeze-up. It also added at least $25,000 in extra costs.

The situation is exacerbated when removal and replacement of mundane and ordinary properties is planned, even when it is necessary to improve safety or operational flexibility. Removal and replacement constitutes an adverse effect under Section 106. An adverse effect to a property listed on or eligible for the National Register triggers Section 4(f) protection under the Department of Transportation Act (49 USC 303). This Act directs that the Secretary of Transportation shall not approve any program or project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of or from an historic site unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm.

Section 4(f) protection also applies to contributing elements to historic districts that do not individually possess integrity and meet the criteria for National Register eligibility, which is the case with many Alaska Railroad properties. SAFETEA-LU Section 6009 specifically addressed de minimis impacts to historic sites, but not historic districts and contributing elements. According to the regulations and as confirmed by an Advisory Council on Historic Preservation representative, removal of a contributing feature, regardless of how minor or mundane the feature, is considered an adverse effect to the historic district. There is no mechanism for determining that an adverse effect to one or more contributing elements to a historic district can be considered a de minimis impact if the historic district as a whole is not adversely affected. Therefore, a minor contributing feature that is not individually eligible for the National Register has the same status under Section 4(f) as a significant bridge or other property that is eligible on its own merits.

This situation requires preparation of a Section 4(f) evaluation for the subject historic property, which is a detailed analysis documenting there is no feasible and prudent alternative to the use of the property, and all possible planning to minimize harm has been conducted. The Section 4(f) process unnecessarily delays environmental reviews and transportation decision-making. It adversely affects the Alaska Railroad by limiting our ability to improve rail safety, to enhance operational efficiency, and to expand our services in a timely manner. Important safety improvement projects, such as replacing a structurally deficient bridge, are unnecessarily encumbered by paperwork and delays, and higher costs.

In addition to the Bridge 432.1 situation highlighted in our oral testimony and Exhibit 2, examples regarding our timber trestle bridges further illustrate the problem. In these situations,

the Section 106 and Section 4(f) processes delayed important safety upgrades. Between 2002 and 2006, 17 bridge safety projects, replacement of structurally deficient timber bridges, were delayed. Bridge 233.3 replacement was delayed one year because SHPO asserted the bridge was, quote, a "contributing feature to a potential historic district." Removal of these bridges constituted an adverse effect and therefore completion of the Section 4(f) process was required. Exhibit 4 summarizes the 4(f) submittals that have been required since 2002.

Projects funded by other federal agencies would also be affected if the Alaska Railroad is determined to be or treated as an historic district. Consider separated highway/railroad grade crossing projects undertaken by the Alaska Department of Transportation and Public Facilities, funded by the Federal Highway Administration. Grade separation is a federally supported nation-wide safety initiative for pretty obvious reasons. Existing at-grade crossings constructed over 50 years ago would also be contributing elements to a railroad historic district. Agencies sponsoring conversion to separated grade crossings for safety reasons would also experience unnecessarily burdensome delays in environmental reviews and transportation decision-making, along with higher costs.

There are appeal mechanisms available. The appeal mechanism regarding eligibility determinations is to the "Keeper" of the National Historic Register. The appeal mechanism regarding findings of effect (e.g., is there an adverse impact on the historic property or not?) is to the Advisory Council on Historic Preservation. These appeal processes take time, adding to project delays and costs. In addition, they are made to historic preservation professionals who are, by their own statutory mandates, more focused on preservation than on operational realities.

A key part of our problem is the de facto assumption by SHPO that the Alaska Railroad is an historic district, and any individual properties near or over 50 years in age are eligible as contributing elements simply because of that association. There is no basis to appeal such a determination, as the regulations are clear that this would be an adverse effect. In fact, such an appeal could trigger a requirement to conduct a determination of eligibility for the entire Railroad for the National Register. Should the Alaska Railroad be formally determined eligible as an historic district, we would be in an even worse situation than we are now—undoing or reversing a determination would be even harder than preventing the determination in the first place.

In closing, we continue to support efforts to preserve Alaska's history and that of the Alaska Railroad, but we must ensure the safe operation of the Railroad. The historic district issue is an ongoing immediate problem that needs to be fixed. The Alaska Railroad is a critical component of the state's transportation infrastructure and must continue its mission as an economic tool for development. Essential safety improvement projects or projects to improve our operational efficiency and flexibility have been and will continue to be unnecessarily encumbered by paperwork and delays -- at the expense of the Alaska Railroad, the Federal government, the traveling public, and taxpayers, with no discernable public benefit. Through the Shuster Amendment, we can ensure the safe operation of the Railroad and continue our historic preservation efforts, focusing those efforts on truly deserving properties.

Exhibit 4
Alaska Railroad Section 4(f) Submittals

Section 4(f) Evaluations completed prior to 2002: None

Section 4(f) Evaluations completed since 2002: Six (6)

1. Replacement of Five Alaska Railroad Bridges

   Mile 187.6 – Iron Creek (Willow Creek Overflow)
   Mile 200.9 – Caswell Creek
   Mile 233.4 – Unnamed Drainage to Susitna River
   Mile 233.6 – Unnamed Drainage to Susitna River
   Mile 267.7 – Valentine Creek

2. Replacement of Five Alaska Railroad Bridges

   Mile 238.4 – Gold Mine Creek
   Mile 239.0 – Unnamed Tributary to Susitna River
   Mile 239.1 – Unnamed Tributary to Susitna River
   Mile 245.8 – Portage Creek (also know as Porter Creek)
   Mile 260.3 – Valentine Creek

3. Replacement of Eight Alaska Railroad Bridges

   Mile F5.7 - Placer Creek (timber)
   Mile 217.5 - Question Creek (timber)
   Mile 233.9 - Unnamed drainage to the Susitna River (timber)
   Mile 244.6 - McKenzie Creek (timber)
   Mile 252.5 - Skull Creek (timber)
   Mile 256.2 - Unnamed drainage (timber)
   Mile 305.7 - Chulitna River (steel)
   Mile 354.4 - an unnamed drainage (steel)

4. Replacement of Bridge 233.3 and Other Alaska Railroad Timber Bridges

5. Alaska Railroad Moody Tunnel Removal

6. Alaska Railroad Bridge 432.1 Replacement

Exhibit 5
Alaska Railroad Historic Initiatives

The Alaska Railroad has ongoing programs that address its historic resources. We also undertake extensive public outreach activities to provide historic information to the public as described below.

Alaska Railroad Historic Record Collection at National Archives and Records Administration
In 1995, Alaska Railroad historic records were physically transferred to the National Archives and Records Administration – Alaska Region. These records cover the period when the Alaska Railroad was part of the U.S. Department of the Interior (1914-1967) and the U.S. Department of Transportation (1967-1985). In April 2007, NARA staff in Anchorage provided information on these records by identifying the records series, approximate dates, and cubic footage. NARA staff has also provided brief narrative summaries of the contents of each records series. Since 2002, Architectural Recordation Forms prepared for various Alaska Railroad features determined eligible for the National Register (e.g., bridges, Curry Wye, Moody Tunnel) are also archived here.

Alaska Railroad Photo Collection at the Anchorage Museum of History and Art
The Alaska Railroad houses its historic photo collection at the Anchorage Museum. The collection is comprised of approximately 15,000 images that include construction photos dating from as long ago as 1914. The photos are searchable by subject or railroad milepost. Photos and negatives are not loaned, but photo reproductions are available for purchase, either in print format on photo-quality paper, or as a digital scan on CD. Many of these photos are now available for public view on an internet site maintained by the University of Alaska-Fairbanks at vilda.alaska.edu.

Alaska Railroad Engineering Library
The Alaska Railroad maintains an engineering library, including historical design drawings and other information pertaining to the construction of the Railroad and its various elements (bridges, buildings, tunnels, etc.). SHPO representatives and cultural resources professionals are provided access to that information for research purposes.

Records Retention Project
The Alaska Railroad is developing a records retention program that includes digitization of Alaska Railroad records. Historic original engineering drawings are currently undergoing digitization. Unless otherwise prevented by law or security concerns, the Railroad's records are considered public records.

Donation/Preservation of Historic Structures and Equipment
In October 1997, the Railroad donated two historic residences known as the "Browns' Point Cottages" to the Municipality of Anchorage and issued a "no-fee" lease for the underlying ground. The cottages were constructed on railroad property in 1941 for the US Army Corps of Engineers. The cottages were restored and listed on the National Register in July 2004.

Numerous other structures and equipment have been donated by the Railroad to various local governments or non-profit organizations, including the Wasilla Depot and the Nenana Depot, both listed to the National Register in 1977, and historic rail equipment to the Museum of Alaska Transportation and Industry.

In addition, the Railroad's flagship passenger facility, the Anchorage Depot, was added to the National Register in 1999 and continues to be maintained and operated under historic preservation guidelines.

Anchorage Museum of History and Art Railroad Exhibit
Anchorage Museum featured an Alaska Railroad exhibit April 16 through October 1, 2006. The exhibit highlighted the construction and development of the railroad and the communities tied to it, revealing the railroad's impact across southcentral and interior Alaska during the past century. In addition to photographs, the exhibit included three-dimensional artifacts, including railroad equipment, facility signs and memorabilia from the Railroad and its employees. The Railroad underwrote the exhibit and now owns 12 large interpretive boards that will be displayed in depots.

Other Interpretive Signage
Over the years many interpretive sign projects have included Alaska Railroad history. Recently, the railroad's bridge rehabilitation and construction program and the U.S. Forest Service's Chugach National Forest Whistle Stop program have also included interpretive signs. The Railroad also installed interpretive signs at its Curry location as part of a plan to develop a new tourist/cultural opportunity. Locations of interpretive signage are:

- Denali Park
- Moody Tunnel
- Curry
- Whistle Stop (Forest Service)
- Ship Creek (vicinity of original railroad headquarters in Anchorage)

Alaska Railroad Website
The Alaska Railroad currently hosts a historical photo timeline with editorial on its internet site highlighting significant events from 1914 to present.

Panoramas Magazine
This magazine, produced by the Railroad and distributed to all train passengers, includes several articles about the Railroad's history and references:

- Then and Now
- The Frederick Mears story
- Curry and gold
- Points of interest – Anchorage to Fairbanks: select mileposts described, often with historical information
- Next stop sections on each major town/city, which include relevant historical information

Tour Guides and On Board Staff
Alaska Railroad Tour Guides are high school students trained and paid at Railroad expense to share information on passenger trains using an intercom system in each rail car. The tour guide comments cover special points of interest, cultural and historical information, geological features, and many other interesting facts about Alaska and the Railroad's history. The Railroad updates all the tour guide scripts annually.

Collateral Materials Including Historical Information
The Alaska Railroad develops various materials containing historical information: *Alaska Railroad Strip Map* (provided to all rail passengers) features historical information by milepost. *Panoramas Magazine* (noted above) features many historical articles and facts. Corporate Media Kit features a history overview and timeline. Broadly distributed Railroad newsletters (*All Aboard, Community Ties, Tenant Ties*) often feature historical articles. The theme of the Railroad's 2004 Annual Report was "A Vision Etched in Steel" featuring historical references and photos.

Tourist Opportunities
The Railroad, often in partnership with others, is actively developing new tourist opportunities that educate visitors and provide historic information about the Railroad. Examples include the planned development in the Curry area (important in the early history of the Railroad through the late 1950s) and the Forest Service's Whistle Stop program. Both projects promote visitor use of the area and include interpretive signage about historic resources.

Preserving America's Heritage

TESTIMONY FOR THE RECORD

SUBMITTED BY JOHN M. FOWLER
EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION

TO THE SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
THE HONORABLE CORRINE BROWN, CHAIRWOMAN

HEARING ON THE
EFFECTS OF HISTORIC PRESERVATION REQUIREMENTS ON RAIL INFRASTRUCTURE

JUNE 5, 2008

INTRODUCTION

I am John Fowler, Executive Director of the Advisory Council on Historic Preservation (ACHP). The ACHP is an independent agency, created by the National Historic Preservation Act of 1966 (NHPA), to advise the President and Congress on historic preservation matters. We also administer Section 106 review – the portion of the NHPA that deals with review of Federal agency programs and projects that have the potential to affect historic properties. In this latter capacity, the ACHP has long been aware of the historic significance of America's rail infrastructure and the need to strike a balance between accommodating historic preservation concerns with the needs of active, profit-producing rail operators. These are not irreconcilable issues and the consultative planning process afforded under Section 106 regularly facilitates effective solutions.

In the last year the Section 106 process has been successfully concluded with agreements regarding improvements to the timber trestle bridges on the Alaska Railroad; clearance improvements to the Heartland Corridor through Virginia, West Virginia, Kentucky, and Ohio; and depot rehabilitations in Elm City and Parkton, North Carolina. These recent examples help to illustrate that federal agencies can efficiently take into account the effects of their undertakings on historic railroad-related properties through the Section 106 review process defined in our regulations, "Protection of Historic Properties" (36 CFR Part 800).

RAILROADS AS HISTORIC PROPERTIES

Railroads are central to the history and development of the United States. Railroads brought settlers to otherwise inaccessible localities, spurred the development of local industries and prosperity, and knitted the nation together with a network that moved goods and people with unprecedented efficiency and speed. The physical plant of America's railroads represented state of the art engineering and design, constructed

by the many immigrant groups that built our nation – stone walls by Italian masons, tunnels dug by Irish and Chinese laborers, and bridges and station buildings of all shapes and sizes. As the Subcommittee's background materials indicate, it is fully understandable that the National Register of Historic Places, the basic inventory of the nation's heritage sites maintained by the National Park Service, includes numerous railroad and railroad-related historic properties that have been recognized for their local, State, and national significance.

THE SECTION 106 REVIEW PROCESS

In the Section 106 review process, a federal agency that may carry out, fund or permit undertakings that affect a rail line evaluates whether the line has historic significance and sufficient integrity to illustrate that significance according to the Criteria for Evaluation established by the National Park Service in its regulations at 36 CFR Part 60. The federal agency conducts this evaluation in consultation with the applicable State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and other consulting parties, including the rail operator. If no historic properties will be affected by the undertaking, the federal agency makes a finding and concludes the process.

If the federal agency determines that the rail line or individual elements meet the criteria for listing in the National Register, the agency continues consultation with the SHPO/THPO and other consulting parties to assess whether or not the historic properties will be adversely affected by the undertaking. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association (36 CFR § 800.5(a)(1)). If no historic properties will be adversely affected by the undertaking, the federal agency makes a finding and concludes the process.

CONCERNS WITH THE CURRENT LEGISLATIVE PROPOSAL

As a matter of policy, the ACHP opposes blanket legislative exemptions for particular resource types or classes of federal undertakings. Such intervention in the longstanding administrative review process is unwarranted to deal with the purported issues and would set an inappropriate precedent for other types of historic properties, validating the notion that special interests can invoke congressional action simply because they find the application of current law inconvenient.

The current proposals are designed to address issues that have been identified in two particular states, Alaska and North Carolina. Our understanding is that the challenges faced by the two testifying rail operators are neither widespread nor shared by others throughout the nation. This indicates that the problem is not systemic, requiring radical surgery of a 42-year old law. Rather, the concerns can be addressed through administrative relief options that are provided for in the ACHP's regulations and have a proven track record of adapting the Section 106 review process to meet agency missions while respecting the established Federal policies set forth in the NHPA which protect our nation's heritage.

RECENT EXAMPLES OF ADMINISTRATIVE RELIEF

The ACHP's regulations, which were last revised in 2004, have been successful in providing agencies administrative relief from provisions in Section 106 when situations warranted such accommodations. There are three examples that are noteworthy in that the outcomes have been fully adopted by Section 106 practitioners and have enabled much needed services and activities to proceed in a manner that balances historic preservation and project goals.

The first example is the development of a nationwide Programmatic Agreement with the Federal Communications Commission (FCC) and the telecommunications industry to streamline the review of cell tower construction. The agreement exempts tower siting projects at certain locations; limits the identification and evaluation of historic properties to those that were already listed in existing surveys; and establishes a consistent approach to defining the area in which historic properties are to be considered. This effort brought consistency, predictability, and efficiencies to the telecommunications industry as they expanded the network of cell towers necessary to keep up with the demands of the 21st century.

A second example is the exemption of historic natural gas pipelines that are subject to reviews by the Federal Energy Regulatory Commission (FERC). In response to the natural gas industry's concerns about having to modify plans to operate pipelines that were designated as historic properties, FERC requested that the ACHP exempt consideration of effects to the pipelines themselves from Section 106 review. The ACHP agreed to this approach and published a notice of the exemption in April 2002.

Another example which is noteworthy as a tailored approach to address unique types of historic properties that were subject to Section 106 review is highlighted the ACHP's 1991 Report, *Balancing Historic Preservation Needs with the Operation of Highly Technical or Scientific Facilities*. Per the request by Congress in 1989, the ACHP undertook an analysis of the impact the designation of scientific research institutions as historic properties would have on their mission and operations. The study focused primarily on a review of National Aeronautics and Space Administration (NASA) facilities and its need to continue to operate research and space exploration program at facilities that were historic and designated as elements of the "Man in Space" program. As a result of the findings in the study, it was recognized that science and technological agencies could benefit from a programmatic approach to compliance with NHPA. A Programmatic Agreement was executed with NASA that addressed stewardship issues, partnership opportunities, and development of mitigation measures for buildings that had to be altered or lost to facilitate agency mission. The Section 106 process was adapted to respond to NASA's mission without compromising the role that its facilities and objects played in the scientific history of the nation.

It should be noted that the impetus for the study was an effort by the scientific community to obtain a legislative exemption from Section 106. The Congress wisely chose to let the agencies use the existing administrative tools to address the issue successfully.

OPPORTUNITIES TO CONSULT WITH AGENCIES AFFECTING RAILROADS

While the examples above address non-transportation agencies, it should be noted that there might be additional administrative relief available in the federal agencies that provide financing, assistance, or approvals for railroad undertakings. As was the case with the Federal Highway Administration (FHWA) regarding its Interstate Highway System, the ACHP has worked with many federal agencies to identify opportunities for modifying and streamlining the Section 106 review process for particular programs. Rather than pursue a legislative exemption, FHWA consulted with the ACHP and other consulting parties to develop an exemption that released all Federal agencies from having to take into account effects to the Interstate Highway System. All agreed that attention through Section 106 should be focused on only those elements of the System that possessed exceptional historic significance. The diversity of historic railroad properties makes it infeasible to adopt the Interstate Highway exemption, but the process that led to the successful exemption can be a model for addressing historic railroad properties.

The very railroads that are bringing forward this call for exemption have had successful experiences with the administrative alternatives. At the local level, the Federal Railroad Administration (FRA), the Alaska State Historic Preservation Officer (SHPO), and the Alaska Railroad recently executed a Section 106 agreement regarding the treatment of historic timber trestle bridges, which need continued maintenance and improvements. This approach could be expanded, using a similar agreement recently executed among

FRA, the Delaware SHPO, and Amtrak for the Wilmington Shops as a model, to extend to the entire Alaska Railroad System. In the Wilmington Shops agreement, many maintenance and improvement activities are exempt from Section 106 review, and streamlined review processes are established for certain specific components of the Shops -- the round house, the station – for more careful review.

The FRA, Federal Transit Administration (FTA), STB, and FHWA have not yet contacted the ACHP to discuss the programmatic alternatives that would provide the relief to the problems that railroad operators have shared with Committee. We are open to such discussions, however, as they may assist in finding solutions that could minimize project delays and increased costs for historic preservation reviews. Now that we have been made aware of the level of frustration felt by the Alaska Railroad and the North Carolina Department of Transportation with the possible designation of State railroad corridors, we will contact the Federal agencies with jurisdiction over their projects to further understand their challenges and to provide administrative relief in the short term, as needed. We also stand ready to participate with the railroad industry in their individual Section 106 reviews or consultations to develop programmatic approaches tailored to their circumstances.

Railroads are a vital component of our nation's transportation network, with growing importance as we face congestion and environmental challenges. The ACHP strongly believes its regulations can provide for an administrative solution that allows for the continued vitality of rail transportation while also ensuring a reasonable and appropriate level of preservation of our Nation's rich railroad heritage.

We appreciate the opportunity provided to the ACHP to share its testimony with the Committee. We look forward to working with you and other stakeholders to explore options that will address the long-term treatment of historic railroad properties and facilities.

Ms. Marianne Wesley Fowler
Senior Vice President of Federal Relations
Rails-to-Trails Conservancy

Testimony
Presented to the Subcommittee on Railroads, Pipelines
and Hazardous Materials of the
Committee on Transportation and Infrastructure

June 5, 2008
United States House of Representatives

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Testimony of
Rails-to-Trails Conservancy
Presented to the Subcommittee on Railroads, Pipelines and Hazardous Materials
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Introduction

Thank you for allowing Rails-to-Trails Conservancy the opportunity to testify at this hearing on "Historic Preservation of Railroad Property and Facilities." Rails-to-Trails Conservancy (RTC) is a national nonprofit conservation organization founded in 1985. RTC's mission is to create a nationwide network of trails from former rail lines and connecting corridors to build healthier places for healthier people. Specifically, RTC identifies rail corridors that are not currently needed for rail transportation and works with communities to facilitate the preservation and continued public use of the corridor through conversion into public trails and non-motorized transportation corridors. Headquartered in Washington, D.C., with four regional field offices located in California, Florida, Pennsylvania, and Ohio, RTC has more than 100,000 members and supporters nationwide.

Rails-to-Trails Conservancy opposes any attempt to exempt railroad corridors or facilities from federal historic preservation laws. Not only are historic railroad facilities central to our history and identity as a Nation, federal preservation laws also further our national policy to preserve America's built railroad infrastructure for continued public use as transportation facilities. There is no applicable precedent for exempting an entire category of already-recognized – indeed iconic – historic properties from federal historic preservation laws. Unlike the limited exemption that was carefully crafted for the interstate highway system in 2005, any attempt to exempt railroad facilities from historic preservation laws would undermine key national policies and would inevitably deprive some of America's most cherished historic resources of the modest legal protections that are routinely applied to all historic properties.

Rail Corridor Preservation and Historic Preservation Go Hand in Hand

Railroads have played an integral role in the history, development and national identity of America. At the turn of the century, the country's labyrinth of rail lines hauled food to market, moved the coal that heated cities, took settlers into the Western frontier, and played a critical role in the development of communities across the country. Some of these corridors are engineering

marvels, literally moving mountains and represent public works accomplishments of monumental proportions for a young Nation.

At the peak of the rail era in 1916, more than 270,000 miles of track crisscrossed the United States, carrying freight and passengers and fueling the economy and growth of a nation. The extraordinary symbolic importance of railroads to our collective sensibility as a nation is evident in Walt Whitman's elegiac poem, *When Lilacs Last in the Dooryard Bloom,* as a nation in mourning watched the train bearing President Lincoln's body from Washington to Springfield, in Whitman's expansive homage to the transcontinental railroad in the *Passage to India,*[1] and in Steve Goodman's evocative song "City of New Orleans."

The historic significance of unused railroad corridors makes them particularly attractive for continued public use as trails or scenic railways. Historic bridges, trestles, tunnels, and roadbeds are retained, archaeological artifacts or ruins are preserved in place, and these unique historic assets are made accessible to tens of thousands of members of the public daily for a wide range of recreational and physical activities. For example, the York County Pennsylvania's Heritage Rail Trail County Park was once part of the Northern Central Railroad Corridor, a railroad line constructed in the early 1830s that carried Abraham Lincoln as far as Hanover Junction on the way to deliver the Gettysburg address. The historic corridor and now trail stretches 21 miles from the Maryland line to the City of York, Pennsylvania.

But railroad facilities are not simply historic monuments or potential recreational facilities. Our nation's built railroad infrastructure is an invaluable and irreplaceable *transportation* asset. Today, it would be virtually impossible to recreate this system once the right-of-way is abandoned and sold, and bridges, tunnels and other costly structures destroyed. Like Humpty Dumpty, a rail corridor, once dismantled and fragmented, cannot easily be put back together again due to the present high cost of land and the difficulties of assembling rights-of-way in our increasingly populous nation. Historic preservation laws and policies serve to protect our nation's rail corridor system, "painstakingly created over several generations,"[2] from being irreparably lost as transportation corridors.

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[1] In *Passage to India,* Whitman wrote:

I see over my own continent the Pacific railroad surmounting every barrier,
I see continual trains of cars winding along the Platte carrying
freight and passengers,
I hear the locomotives rushing and roaring, and the shrill steam-whistle,
I hear the echoes reverberate through the grandest scenery in the world,
* * *
Marking through these and after all, in duplicate slender lines,
Bridging the three or four thousand miles of land travel,
Tying the Eastern to the Western sea . . .

Walt Whitman, *Leaves of Grass* (1871)

[2] *Reed v. Meserve,* 487 F.2d 646, 649-50 (1st Cir. 1973).

Congress has recognized the importance of preserving our built rail system in declaring our "national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use."[3] This national policy favoring corridor preservation, proclaimed in the heyday of cheap oil, reflects Congress' foresight in seeking to protect its significant public investment in the creation of these corridors, which were largely assembled through the use of eminent domain, public lands grants, loan guarantees and/or cash awards, and anticipating their possible return to active rail service.

While the focus of RTC's mission is on preserving our nation's built rail infrastructure as transportation corridors rather than specifically as historic monuments, corridor preservation and historic preservation go hand in hand. As the highly successful federal Transportation Enhancement Program recognizes, community preservation and livability are major goals of federal transportation policy, and rail-trails are superb examples of the preservation and adaptive re-use of historic resources. Federal historic preservation laws play a key role in helping to protect and preserve our nation's built rail corridor infrastructure as a living part of our national heritage and as valuable – indeed, irreplaceable – transportation resources.

Federal Historic Preservation Laws Help to Preserve Railroad Corridors for Continued Public Use

- ***Section 106 of the National Historic Preservation Act Helps Carry Out Our National Rail Corridor Preservation Policy***

Section 106 of the National Historic Preservation Act requires all federal agencies to take into account the effect of federal "undertakings" such as the issuance of permits or licenses on historic properties and to consider whether there are any alternatives that would avoid adverse effects.[4] Section 106 comes into play when railroads seek permission from the Surface Transportation Board (STB) to abandon freight rail service on a line. The STB's review of abandonment applications through the historic preservation lens is important, since abandonment authorization permits the railroads to divest themselves of its ownership of the corridor, including tracks, ties, trestles, bridges, culverts, and ballast as well as the underlying real estate, actions that could hamper efforts to preserve these corridors for continued public use as transportation corridors.

Congress has created several legal mechanisms to foster the preservation of historically significant railroad corridors and facilities that are proposed for abandonment. One of the most

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[3] 16 U.S.C. § 1247(d).

[4] 16 U.S.C. § 470f.

important mechanisms available to preserve inactive or unused railroad corridors is for them to be placed in the national "railbank," which allows the corridor to be transferred to an "interim trail manager" for use as a trail until such time as it is needed again for rail service. Rails-to-trails conversions represent an alternative to destruction of historic rail corridors that allows for their preservation and adaptive re-use as transportation corridors and public amenities.

While Congress has granted the STB the authority to temporarily delay abandonment authorization if an alternative public use for the corridor is proposed, private railroads are (unfortunately) not required to make their unused corridors available for continued public use, even to a financially responsible manager. Instead, rails-to-trails conversions depend almost entirely on voluntary negotiations between private railroads and potential trail managers. And because railroads frequently seek STB abandonment authorization through "fast track" procedures, there is often little time for public agencies to secure the approvals and resources needed to negotiate a possible rails-to-trails conversion.

In this context, Section 106 provides a critical constraint to the ability of private railroads to dismantle historic transportation corridors and provides an important mechanism for the consideration of public re-use options that might avoid or minimize harm to these resources. To carry out its Section 106 obligations, the STB imposes conditions that temporarily bar railroads seeking abandonment authorization from removing any historic bridges or other features and requires railroads to engage in historic preservation consultations. These preservation conditions give public agencies and potential trail managers additional time to undertake the due diligence and reviews that necessarily precede public land acquisitions, and ensures that important historic structures and features that will facilitate trail use and enhance the trail experience are not removed until these consultations are complete.

Federal historic preservation laws were instrumental in preserving portions of the 66.5 mile Enola low grade line in Lancaster County, which was determined by the Keeper of the National Register to be eligible in its entirety for listing in the National Register of Historic Places. The rail historic line follows the Susquehanna River through some of the most scenic areas of the northern Piedmont, and includes numerous stone arch bridges and culverts. The preservation condition imposed by the Interstate Commerce Commission (ICC) prevented the railroad from precipitously dismantling the corridor. Today, plans are underway to transfer portions of the corridor to several Pennsylvania Townships for use as a trail.

- ***Federal Historic Preservation Laws Protect Railroad Corridors from being Harmed by Federally Funded or Licensed Projects***

Projects or activities affecting historic railroad bridges may also require the approval of the U.S. Army Corps of Engineers and/or the U.S. Coast Guard. Again, Section 106 provides important temporary protection to historic railroad corridors and their historic features and elements. For example, the Coast Guard is now undertaking a Section 106 review of the plans of Union Pacific Railroad to dismantle the historic Boonville Lift Bridge, a critical link between the

Katy Trail National Park and Kansas City, Kansas. Likewise, federal land managing agencies must take into account the impacts of mining, grazing or other permitted actions on historic railroad corridors located on public lands.

Section 4(f) of the Department of Transportation Act[5] also plays an important role in protecting historic rail corridors, including rail-trails, from being "used" as part of federally funded highway or transit projects, and provides a mechanism for the consideration of measures that would allow these historic corridors to be preserved intact for continued public use. Section 4(f) mandates that transportation agencies select any prudent and feasible alternatives that would avoid or minimize harm to historic rail corridors. In the case of rail-trails, for example, Section 4(f) might require the construction of a grade-separated crossing to allow trail users to safely cross over or under a highway.

Compliance with Section 4(f) and Section 106 for federal undertakings need not be particularly burdensome or time-consuming. The Federal Highway Administration (FHWA) has developed "programmatic" Section 4(f) procedures for projects that affect historic bridges, as well as Statewide Section 106 programmatic agreements to further the goals of environmental streamlining. Section 106 also provides an expedited mechanism for submitting National Register eligibility disputes to the Keeper of the National Register, which must respond to requests for eligibility determinations within strict time frames. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) enacted new Section 4(f) provisions governing "*de minimis* impact" projects that relies on Section 106 consultations to ensure that Section 4(f) remains applicable where historic properties are adversely affected by transportation projects. These programmatic agreements and procedures are examples of how historic preservation laws have been successfully streamlined for routine or low–impact project to minimize unnecessary paperwork and costs without eroding substantive protections.

There is No Precedent for Exempting Historic Railroad Corridors Wholesale from Historic Preservation Laws

There is no applicable precedent for legislating a wholesale exemption from historic preservation laws for an entire class of historic resources and certainly not for a class of properties as important as historic railroad facilities. The limited exemption from Section 4(f) applicable to the interstate highway system, passed in 2005 as part of SAFETEA-LU, is a unique situation and does not establish a precedent for exempting historic rail corridors or facilities from preservation laws.

The limited exemption for the interstate highway system was prompted by the possibility that the interstate highway system as a whole was about to turn fifty years old, and would therefore be presumptively eligible for historic designation. The Advisory Council on Historic Preservation, which is the independent federal agency responsible for implementing Section 106, responded by developing an administrative process for determining the historic significance of

5 23 U.S.C. § 138; 49 U.S.C. § 303.

the interstate system.[6] Under this process, the FHWA was given a one-year period to identify those elements of the interstate system that were historically significant, which would then remain fully protected by Section 106. This process allowed for the historic significance of the interstate highway system to be assessed in an orderly and efficient fashion, rather than on a piecemeal basis in the context of individual road projects. In SAFETEA-LU, Congress merely adopted the results of this administrative process to determine what portions of the interstate system should remain subject to Section 4(f).[7]

The interstate highway system is a vastly different type of resource from the national rail system. Construction of the interstate system was authorized and began in 1956, and upon completion, consisted of approximately 46,000 miles. Identifying historic elements that were to remain subject to federal preservation laws was relatively easily done, as the entire system is mapped, easily identified, and managed by the various state highway agencies, all of whom have an ongoing cooperative relationship with a single, federal agency -- the FHWA -- on a daily basis. The FHWA was therefore able to accomplish the task of identifying historic elements of the interstate highway system within the designated time frame and ensure that all historic elements of the interstate system were fully protected.

By contrast, the Advisory Council on Historic Preservation has not developed, or contemplated the development, of a comparable process for identifying historically significant rail corridors and/or their important elements. Attempting to develop such a process would present numerous administrative obstacles. First, unlike the interstate highway system, there is no single federal agency that could be tasked with the responsibility for identifying the many historic rail corridors or their historic elements that are potentially eligible for the National Register. The national railroad system, which at its peak consisted of more than 270,000 miles of track, is more than six times larger that the interstate highway system. Unlike the interstate system, most of these corridors date from the turn of the century, and many of these corridors have long been considered historic, and/or include historically significant elements, such as bridges and tunnels. While some historic corridors and structures were designated or identified during the course of Section 106 reviews triggered by abandonment authorization or other federal undertakings, many historic facilities have never been evaluated for historic significance, or upon reevaluation, would now be considered significant.

Second, there is no one federal agency that has jurisdiction over, or the resources or ability to communicate with, all railroad entities. The STB has jurisdiction only over active freight rail lines operating in interstate commerce and only in the context of exercising a specific regulatory function. These lines are managed by a variety of entities, ranging from state transportation entities, regional authorities, and Class 1 railroads to private business and

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[6] *Federal Register*, Vol 70, No. 46, at 11928 (March 10, 2005).

[7] 23 U.S.C. § 103(c)(5).

nonprofit organizations. Numerous active rail lines are not subject to the STB's regulatory authority.

Moreover, there are also currently over 15,000 miles of railroad corridors used as rail-trails, with 9,500 more miles under development. These former railroad facilities are managed by park agencies at all levels of government, as well as intergovernmental authorities, natural resource districts, and nonprofit organizations, and are likewise not subject to oversight by any single federal agency. There is no single database or repository of information even identifying where these corridors are located and what entities manage or have jurisdiction over them. Accordingly, it would be extraordinarily difficult, if not impossible, to develop a process for identifying historic rail corridors that ensured that important historic rail corridors and features remained protected by Section 106 and Section 4(f).

Conclusion

The National Historic Preservation Act was passed in 1966 in recognition that the spirit and direction of the Nation are founded upon and reflected in its historic heritage which should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people. Our built railroad system exists as a deeply evocative symbol of our history and identity as a nation as well as representing an extraordinary investment in an energy efficient form of transportation, and rightfully should be the subject of enhanced legal protections, rather than any proposal to remove them from protection altogether.

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Testimony on Historic Preservation of Railroad Property and Facilities
For the Subcommittee on Railroads, Pipelines and Hazardous Materials
House Transportation and Infrastructure Committee
United States House of Representatives
June 5, 2008

I would like to thank Chairwoman Brown, Ranking Member Shuster, and the members of the House Railroads, Pipelines, and Hazardous Materials Subcommittee for the opportunity to appear before you. I am Rodney Little, the State Historic Preservation Officer for the State of Maryland and former President of the National Conference of State Historic Preservation Officers. On behalf of the 57 Historic Preservation Officers we appreciate the opportunity to present our thoughts on the preservation of historic railroad property and facilities.

The National Conference of State Historic Preservation Officers (NCSHPO) is the professional association of the State government officials who carry out the national historic preservation program as delegates of the Secretary of Interior pursuant to the National Historic Preservation Act of 1966. The NCSHPO acts as a communications vehicle among the SHPOs and their staffs and represents the SHPOs with Congress, federal agencies and national preservation organizations

For the past forty-two years, State Historic Preservation Officers (SHPOS) and State Departments of Transportation have worked cooperatively to advance transportation improvement activities that meet today's transportation needs, while simultaneously preserving our Nation's historic heritage. In 1966, Congress enacted the National Historic Preservation Act in order to preserve the many historic properties being harmed by federal activities. The key process identified in the legislation is commonly known as Section 106. When done correctly, the Section 106 process identifies potential conflicts and resolves them before the project begins so that activities can proceed in timely and cost-effective manner. The administrative tools needed to work effectively through potential issues exist today and are being used successfully across the country.

We are aware of discussions surrounding legislatively exempting railroads from historic preservation reviews in certain states or possibly the nation. Since Section 106 is an effective and efficient process, and our nation's railroads are significant in American history, potentially

exempting the properties and rights-of-way of this important mode of transportation seems inappropriate. The Section 106 process is designed to solve problems and most often results with a win-win resolution.

My testimony focuses on the following: 1. our Nation's Historic Preservation Program 2. the Administration's support of historic preservation 3. Federal resources for preserving historic sites related to transportation 4. the importance of railroads in American History, and 5. the railroad's role in energy conservation and other opportunities.

National Historic Preservation Program

In 1966 Congress recognized the importance of preserving our past by passing the National Historic Preservation Act (NHPA 16 USC 470), which established today's Historic Preservation Program and without which, the historic railroad resources described above would likely not exist today.

The NHPA directs State Historic Preservation Offices (SHPOs) to carry out the federal preservation program: 1) Locate and record historic resources; 2) Nominate significant historic resources to the National Register of Historic Places; 3) Foster historic preservation programs and the creation of preservation ordinances at the local government level; 4) Provide funds for preservation activities; 5) Comment on federal preservation tax projects; 6) Create and update State Historic Preservation plans 7) Review all federal projects for their impact on historic properties; and 8) Provide technical assistance to federal agencies, state and local governments and the private sector. Though often unglamorous, SHPOs' work is the foundation of the preservation of our Nation's heritage.[1]

Congress enacted the NHPA in response to public concern that many of our Nation's historic resources, including historic railroad properties and facilities, were being demolished without receiving any consideration in the Federal construction projects. Congress recognized that new legislation was needed to protect the many historic properties being harmed by federal activities and established what is known as the Section 106 review program in the NHPA.

Section 106 balances historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts and resolve them in the public interest. The review process is administered at the Federal level, by the President's Advisory Council on Historic Preservation (ACHP), and at the state level by the State Historic Preservation Office. It requires that every federal agency "take into account" how each of its undertakings could affect historic properties.

[1] National Park Service, "40 Years The Historic Preservation Fund Annual Report 2007," Washington, 2008.

For example, the Dakota, Minnesota and Eastern (DM&E) Railroad is working on a major upgrade and expansion of their lines through Minnesota, South Dakota, and Wyoming. After first resistance to the historical significance of the railroad in the Section 106 process, through productive discussions they have now embraced the railroads' importance in American and South Dakota history. In addition, the DM&E Railroad supported the listing of the Chicago & North Western Railroad Bridge at Pierre/Fort Pierre on the Missouri River in the National Register of Historic Places in 1998, and as part of a Preserve America project this year, the DM&E Railroad helped fund an interpretive sign on the multi-span, swing-span bridge.

Throughout the past forty-two years, the ACHP and SHPOs have efficiently and effectively carried out our country's historic preservation program. Under the Administration's Program Assessment Rating Tool, management of Historic Preservation Programs received a score of 89% indicating exemplary performance of mandated activities. Reinforcing this finding is the December 2007 National Academy of Public Administration (NAPA) report "BACK TO THE FUTURE: A Review of the National Historic Preservation Program." NAPA, a non-profit, independent coalition of top management and organizational leaders, found that the National Historic Preservation Program "stands as a successful example of effective federal-state partnership and is working to realize Congress' original vision to a great extent."[2]

Administration Support of Historic Preservation

Executive Order 13287, "Preserve America," was signed by President Bush on March 3, 2003. The order establishes federal policy to provide leadership in preserving America's heritage by actively advancing the protection, enhancement and contemporary use of the historic properties owned by the federal government, and by promoting intergovernmental cooperating and partnerships for the preservation and use of historic properties.

The Executive Order directs federal agencies to improve their knowledge about, and management of, historic resources in their care. It also encourages agencies to seek partnerships with State, tribal and local governments and the private sector to make more efficient and informed use of these resources for economic development and other recognized public benefits.

Federal Resources for Preserving Historic Railroad Sites

Congress has established several programs to aid and assist the preservation of our Nation's historic assets. In order to receive funds through these programs the historic site must be classified as eligible for the National Register. Without National Register eligibility, thousands

[2] Office of Management and Budget, DETAILED INFORMATION ON THE NATIONAL PARK SERVICE - NATIONAL HISTORIC PRESERVATION ASSESSMENT, 2003, expectmore.gov and NAPA, "BACK TO THE FUTURE: A Review of the National Historic Preservation Programs" December 2007, p. 29

of historic railroad properties and facilities would be unable to receive Federal Highway Administration Transportation Enhancement grants, National Park Service Save Americas Treasures grants, as well as Historic Preservation Federal Rehabilitation Tax Credits.

Transportation Enhancement Grants
Transportation Enhancement (TE) grants offer funding opportunities to help expand transportation choices and enhance the transportation experience. Eligible activities for funding include the acquisition of scenic or historic easements and sites, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities, conversation of abandoned railway corridors to trails, archaeological planning and research and establishment of transportation museums.

Save America's Treasures
The Save America's Treasures program provides competitive and Congressionally earmarked grants are for restoration, and/or conservation work on nationally significant historic structures and sites, including historic districts, sites, buildings, structures, and objects.

Federal Rehabilitation Tax Credits
The Federal Historic Preservation Tax Incentives program offers tax credits for the rehabilitation of income-producing historic structures. Since 1976, the National Park Service has administered the program in partnership with the Internal Revenue Service and State Historic Preservation Offices. Tax incentives are one of the nations most successful and cost-effective community revitalization programs having leveraged more than $30 billion in private investment to rehabilitate historic building that give cities, towns and rural areas their special character. The tax incentives also generate jobs, enhance property values, and augment revenues for State and local governments through increased property, business and income taxes. The transformations of Washington DC's Union Station and Grand Central Station in New York City were made possible by using historic rehabilitation tax credits.

Importance of Railroads in American History

Colonization and Community
The first regular carrier of passengers and freight was the Baltimore and Ohio railroad, founded on July 4, 1824. Charles Carroll of Carollton the last surviving signer of the Declaration of Independence laid the corner stone. Other American innovations included the 1826 three-mile Granite Railway in Massachusetts and the South Carolina Canal and Railroad Company, begun in 1830, that completed the first mechanical passenger train.

Railroad systems stretching across the Great Plains encouraged emigration and picked the town sites. The fortunes of many cities were made or broken by the passing of railroads through their limits. The railroad provided a market for goods, grain and cattle and it brought the mail and other news of the outside world. The development of the refrigerator car brought tropical and out

of season foods to American homes. Railroads were the primary mode of transportation in pre-automobile days.

The invention of the telegraph, linked to railroad rights of way in the late 1840s and 50s, created a communication revolution creating instant communication across continents.
The railroad depot became the new center of each community. The depot agent was often a well-respected member of the community--and the depot was the place to congregate to hear news about the rest of the world. Today, railroad depots are once again emerging as community centerpieces.

Depots nationwide have architectural styles all to themselves. According to the Railroad Station Historical Society, at one time there were upwards of 40,000 depots; today that figure is halved. They come in different shapes and sizes, but basically all once served to expeditiously move passengers and freight. Many existing depots continue to serve their original function; others have been adapted to useable community space. After years of neglect the buildings are being reclaimed, preserved, and now serve as community or retail centers, museums and even transportation centers.

American Railroad Engineers
In 1826, Colonel John Steven, considered to be the father of American railroads, demonstrated the feasibility of steam locomotion on a circular experimental track constructed on his estate in Hoboken, New Jersey, three years before George Stephenson perfected a practical steam locomotive in England. The first railroad charter in North America was granted to John Stevens in 1815.[3] Grants to others followed, and work soon began on the first operational railroads.

In 1830 Peter Cooper designed and built the Tom Thumb, the first American-built steam locomotive to be operated on a common-carrier railroad, for the B & O. The Pullman Sleeping Car was invented by George Pullman in 1857. Pullman's railroad coach or sleeper was designed for comfortable overnight passenger travel. Pullman's planned community in Chicago due to historic preservation efforts has been preserved as a residential community.

American Bridge Engineers
America has also fathered some of the world's foremost celebrated transportation engineers. Octave Chanute, chief engineer for the Erie Railroad, whose study of wind tolerances in the Pennsylvania Kinzua Valley would later influence his glider designs and the future of aviation; Thomas Curtis Clarke, senior partner with Clarke, Reeves and Company, whose vision and creativity led to the Chicago, Burlington and Quincy (IL) Railroad Bridge over the Mississippi River, the Poughkeepsie (NY) Bridge over Hudson, the New York Elevated Railway and the Hawkesbury Bridge in Australia; and Adolphus Bonzano, a mechanical genius and inventor who was the idea man behind the locking devices for draw bridges. Bonzano would later play a role

[3] Thurman W. Van Metre, *Transportation in the United States* (Brooklyn: Foundation Press, 1950), p. 31.

in hundreds of bridges, including the Red Rock (AZ) Cantilever Bridge over the Colorado River Canyon, completed in 1890.[4]

Today's Historic Railroad Facilities
Historic railroad depots, tracks, bridges and trains continue to fulfill today's community and transportation needs. Just North of Washington D.C. is the Thomas Viaduct which opened on July 4th, 1835 and longest stone arched railroad viaduct when constructed and in use today. It was the bridge ever to be built on a curve. During its construction it was widely believed that the bridge would not hold under the weight of a loaded train. However, it soon proved to be one of the sturdiest structures in the nation and today carries CSX and Maryland MARC commuter trains throughout the day. In 1964 the Thomas Viaduct was named a National Historic Landmark.

The Baltimore and Ohio Railroad (B&O) was one of the oldest railroads in the United States and the first common carrier railroad, with an original line from the port of Baltimore, Maryland, west to the Ohio River at Wheeling. It is now part of the CSX network.

The Altoona Pennsylvania Railroad's contribution to the nation's transportation infrastructure, marks it as one of the most important contributors to America's industrial revolution. By the 1920s, the Altoona railroad works employed 15,000 workers, and by 1945 the Pennsylvania Railroad's facilities at Altoona had become the world's largest rail shop complex. Today the Horseshoe Curve in Altoona stands as a National Engineering Landmark and the rail lines are still used by Norfolk Southern. The Rockville Railroad Bridge, slightly north of Harrisburg is the longest stone arch bridge in the U.S. Listed in the National Register of Historic Places in 1976, its four tracks have been in continuous use since 1906.

The Strauss Bascule Bridge Company of Chicago constructed a double-track bridge for the Florida East Coast Railway (FEC) in 1925 to span the St. Johns River in Jacksonville. This moveable bridge was the heaviest yet built for its time and utilized an unusual truss configuration. It was constructed on the old foundation of the original railroad bridge, which dates to 1889. The FEC line and the railroad bridge continue to operate today and provide an important link between Jacksonville and the rest of the state.

The Future of the Historic American Railroad

Going "Green"
With the worldwide concern over climate change, greenhouse gas emissions and oil prices, public transportation, including commuter, passenger and freight trains are becoming increasingly popular and seen as "environmental friendly" options. According to the American Association of Railroads, freight trains are now two to four times more fuel efficient and cleaner burning than over-the-road trucks on a ton mile basis and rail companies are continually

[4] *Society for Industrial Archeology Newsletter,* ***Fall 2005***

improving their fuel efficiency through better locomotive technology, engineer training and employee involvement.

Industry Expansion
Due to substantial and sustained traffic increases and increasing energy costs, U.S. freight railroads are moving more freight than ever before and demand for freight rail service is projected to grow sharply. Passenger rail growth is also expected to expand. The American Association of Railroads predicts that "capacity will likely be the single most important factor determining our ability to provide the high quality rail services that will be essential for both freight and passengers."

Tourism and History
Historic railroads and facilities will continue to play major roles in tourism and economic development. The Ohio Rail Tourism Association estimates that railroad visitors generate $200 million for Ohio's economy. Highlighted below are successful examples of combining railroad tourism and history from Colorado and Alaska:

- Colorado Historical Society

The Colorado Historical Society owns and operates the Georgetown Loop. The engineering marvel originally built in 1884, fulfilled the hopes of Georgetown citizens to become a prosperous settlement and connected Georgetown to Denver and points east. In connecting Silver Plume and Georgetown, towns over 2 miles apart, the tracks scaled an elevation of 640 feet over mountainous terrain, requiring trestles, cuts, fills, loops, and curves totaling 4.5 miles.

Today the Loop is a popular tourist attraction and an uncommon way to see the Clear Creek Valley. Along the route visitors may also stop for guided tours of a historic silver mine. The park is located on 978 acres and includes an 1884 depot, the Morrison Interpretive Center, two 1860s mines, an 1871 mill building, four reconstructed mine buildings, a locomotive maintenance building, the 1874 Pohle House, and a new rolling stock shelter.

- The Alaskan Railroad

The Alaskan Railroad has played a central role in Alaska's growth -- providing a means for communities to settle and flourish along the railway, supplying the Fairbanks gold fields, helping to build the Alaska Highway, supporting the war effort and hauling pipe and supplies for construction efforts.

Today, the Alaska Railroad continues its tradition of support for the Alaska community by carrying more than 500,000 passengers annually, providing access for Alaskans and visitors from tidewater in Seward and Whittier to the interior of Alaska. In addition, the railroad operation creates over 700 jobs for Alaskans. The railroad also plays a powerful role in the States economic development, hauling nearly 8 million tons of freight per year and transporting building products to construct Alaskan homes and businesses.

The Railroad also works to improve the quality of life for residents along the railway by leasing land to communities for parks, bike trails and other public interest uses.

Conclusion

The importance of the American Railroad not only reaches back in time but also embraces the present and future. NCSHPO supports partnerships and agreements between the railroads and communities that simultaneously advance the expansion and repair of U.S. railways and preserve railway historic resources. Through Section 106 Reviews, federal agencies and the public decide the most effective ways to move projects forward while protecting our nation's heritage. National Register designations afford historic railroad resources eligibility for preservation incentives. NCSHPO believes that the railroads central role in our Nation's history should continue to be honored by affording it the protections and resources available for National Register eligible properties and sees no need for exemptions or additional legislation. The administrative tools needed to work successfully through potential issues exist and are being used effectively across the country. The federal government plays an invaluable role in preserving our nation's history and through our partnership, State Historic Preservation Officers stand committed to identify, protect, maintain, and continue to use our Nation's historic railway heritage.

Thank You.

Testimony of

ELIZABETH MERRITT
DEPUTY GENERAL COUNSEL
NATIONAL TRUST FOR HISTORIC PRESERVATION

before the

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
UNITED STATES HOUSE OF REPRESENTATIVES
HON. CORRINE BROWN, CHAIR

Hearing on

HISTORIC PRESERVATION OF RAILROAD PROPERTY AND FACILITIES

June 5, 2008

Thank you for the opportunity to share the views and concerns of the National Trust for Historic Preservation regarding the significance and preservation of historic railroad property and facilities. My name is Elizabeth Merritt and I am Deputy General Counsel for the National Trust, where I have served as in-house counsel for more than twenty-four years.

Background on the National Trust

Congress chartered the National Trust in 1949 as a private nonprofit organization to "facilitate public participation" in historic preservation, and to further the historic preservation policies of the United States. 16 U.S.C. §§ 461, 468. With the strong support of our 287,000 members around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition to our eight regional and field offices throughout the country, and our Washington, DC headquarters, we have 29 diverse Historic Sites open to the public around the country.

The Chairman of the National Trust has been designated by Congress as a member of the Advisory Council on Historic Preservation, the independent federal agency whose regulations govern the implementation of Section 106 of the National Historic Preservation Act (NHPA). *See* 16 U.S.C. §§ 470f, 470i(a)(8); 36 C.F.R. Part 800. The Advisory Council works with other federal agencies, including the Department of Transportation, to assist them in fulfilling their responsibilities under the NHPA.

The National Trust has had a long-standing interest in transportation issues, and we have been a strong defender of federal laws such as Section 4(f) of the Department of

Transportation Act, 49 U.S.C. § 303, and Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, which protect historic resources. In fact, during the recent reauthorization of the federal surface transportation program that led to the passage of SAFETEA-LU,[1] the National Trust was actively involved in successfully opposing amendments to weaken Section 4(f), and in developing consensus-based proposals with state departments of transportation that provided carefully tailored modifications to the law, with safeguards and monitoring.

Proposed Exemption for Railroads from Historic Preservation Laws

The Alaska Railroad and the North Carolina Railroad would like to exempt historic railroad corridors and related properties and facilities from federal historic preservation laws, relying on the recent provision in SAFETEA-LU addressing the Interstate Highway System, 23 U.S.C. § 103(c)(5). The National Trust strongly opposes such an exemption. It would be inappropriate, unnecessary, unprecedented, and would inevitably encourage additional exemption requests. Existing historic preservation law provides mechanisms that are more than adequate to address the concerns of the railroads, and we have seen no evidence that these administrative tools would not resolve the railroads' concerns. The specific examples raised by the railroads simply do not seem to warrant Congressional intervention. Congress should ensure that the available administrative mechanisms have been fully employed before even considering a proposed exemption.

Historic Railroad Corridors as an Iconic Part of Our Nation's Heritage

As Congress declared in the National Historic Preservation Act of 1966, preservation is essential to the American identity—our historical and cultural foundations orient our people and reflect the spirit and direction of our nation. Few institutions have been more influential in shaping the American identity than the nation's railroads. More than mere crossroads of commerce, the corridors and associated properties of American railroads have literally and figuratively determined where we as a nation are going and how we got there.

In 1832, when Charles Carroll of Carrollton laid the first stone for the new Baltimore & Ohio Railroad (now preserved in the B&O Railroad Museum in Baltimore), the venerable patriot hailed the event as second in importance only to his signing of the Declaration of Independence—if indeed second to that. For the next century, the railroads, ever expanding in capacity, size, speed, and efficiency, came to symbolize the uniquely American combination of uncanny ingenuity, abiding optimism, hard work, and awesome achievement. Just as their presence is an integral part of our physical landscape, the railroads are psychologically intertwined with the landscape of our cultural memory.

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[1] The Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users, Pub. L. No. 109-59 (Aug. 10, 2005).

Engines of manifest destiny "fired with the passion of purposeful endeavor,"[2] the railroads opened the American west. As our cities and towns grew along the trunks and branches of the rail lines, their location was determined by how far a locomotive could travel between servicings. Railroad lines conquered the most inhospitable territory seemingly by sheer force of will; the preserved rail line clinging to the canyon of the aptly-named River of the Lost Souls[3] in Colorado, for example, is a testament to the great sacrifice of life and limb of thousands of immigrant workers drawn to America by the promise of building the railroad.

A now-lonely sign in the Utah desert proclaims the unthinkable feat "Ten Miles of Track Laid in One Day." This achievement, like countless other triumphs of engineering common to American rail corridors, was the fruit of back-breaking labor. The miserable conditions under which the rail lines were built epitomized work on the early railroads generally and stood in stark contrast to the lives of the railroad barons—America's first class of the super wealthy. The rail lines themselves became symbols of a growing disparity of wealth and power—the disenfranchised were said to live "on the other side of the tracks." This disparity, along with an outcry over working conditions and the exploits of the railroad companies generally, gave rise to modern labor organizations and much of our modern system of federal regulation. The rail corridors we seek to protect provided the battleground for the infamous and bloody strikes that defined the early labor movement.

The muscle provided by the nation's vast natural resources and manpower relied upon the circulatory system of America's rail lines. Without the vital connection of the rail lines, people could not get to work and resources could not be extracted, processed, and put to use. Consequently, rail lines were prize targets during the Civil War and both World Wars. Recognizing the pivotal function served by rail corridors, the federal government assumed responsibility for railroad operation at several times in American history, long before the creation of Amtrak and Conrail. The Nazis also recognized the importance of American rail lines to the war effort, sending a group of saboteurs to the United States in 1942 to destroy selected rail corridor targets.

It is appropriate that the preservation of railroad resources has always been a priority in federal law and policy, as exemplified by our nation's railbanking laws, 16 U.S.C. § 1247(d). In addition, many historic rail lines have been preserved for heritage tourism. The Alaska Railroad, for instance, relies heavily on tourists attracted by the historic and scenic beauty of its line. The highly successful White Pass and Yukon (also in Alaska) and the Great Smokey Mountains Railway (North Carolina) serve as additional examples of historic rail lines as tourism destinations that in turn function as regional economic generators.

Historic railroad properties have also played an iconic role in the development of our

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[2] State *ex rel.* Smith v. Kemp, 261 P. 556, 558-59 (Kan. 1927) (used by the court in context of upholding the preservation of lands associated with the Santa Fe and Oregon Trails via an eminent domain action).

[3] Río de las Animas Perdidas, traversed today by the Durango and Silverton Narrow Gauge Railway.

historic preservation laws and the preservation movement itself. It was against the backdrop of the destruction of New York's Pennsylvania Station that Congress passed the NHPA, which forms the foundation of our current federal preservation policy. And the threat to another railroad property—Grand Central Station—led to the Supreme Court decision that undergirds historic preservation regulation as a legitimate governmental objective at all levels: *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

In the years since the destruction of Pennsylvania Station, some 2,486 rail-related properties have been added to the National Register of Historic Places, representing about three percent of all current National Register listings. Actual National Register listings represent just a fraction of the properties that are eligible for the National Register, but a review of those rail-related properties provides a useful overview of the kinds of railroad resources that are significant to our heritage.

Nearly every element of railroad infrastructure, either individually or collectively, is represented on the National Register. Of those properties listed on the Register, approximately 1,500 are stations or depots built to service passengers, freight, or both, and approximately 525 properties are listed as historic districts. But there are also other structures that, while essential to the operation of the railroad and historically important, may be less visible than a centrally located station or depot that was often the cultural heart of the community. Among these supporting structures identified on the National Register are roundhouses (12), enginehouses (4), and hotels (10). Approximately 395 are engineering features of the railroad right-or-way, including bridges (295), tunnels (51), viaducts (19), trestles (12), underpasses (9), inclines (7), culverts (4), overpasses (3), and embankments (2). In addition, the National Register includes 19 rail lines that are listed as corridors or entire railways, including the right-of-way and all associated property. (See Exhibit A.) These are scenic tourist railroads or abandoned rail corridors that qualify for railbanking as trails. Given that the essence of the railroad both now and historically has been to connect one place to another, it is fitting that the corridors themselves—the connection as well as its inherent elements—are recognized as historically significant.[4] We are submitting for the record a printed list of well over 100 pages, which includes all historic properties in the National Register whose significance is railroad-related.

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[4] Railroad corridors can have a historical significance independent of the rail, ties, structures, signage, and signals that comprise it. *See Friends of the Atglen-Susquehanna Trail (FAST) v. STB*, 252 F.3d 246 (2001) (the rail corridor as a whole, beyond its individual bridges and other elements, was deemed by the Keeper of the National Register to be historically significant). The *FAST* case also showed that the piecemeal nomination of individual elements of a rail corridor is ineffective and inefficient in preserving the historic rail corridor itself.

Reasons Why the National Trust Opposes an Exemption for Railroad Properties

1. ***Congress should not create a legislative exemption for a specific type of historic resource.***

Legislation is simply too blunt an instrument to achieve the desired balance between preserving historic resources and the efficient and responsible use of those resources. Allowing a broad exemption from historic preservation laws for the American railroad industry would not only endanger countless resources core to the American identity, but it would also set a potentially dangerous precedent. There is nothing to suggest that railroads are disproportionately burdened or constrained by historic preservation review or by the National Register-eligibility of their corridors—most of which were obtained by federal government grants in the first place. Absent a clear showing of an extraordinary burden that cannot be resolved administratively, there would be little to prevent other entities from seeking similar waivers.

Because many corridors date back to the time of the industrial revolution, they are not only comprised of characteristic features of significant historic import, they themselves are historically significant as well-established pathways. A wholesale exemption would unnecessarily ignore this value, and would foreclose the possibility of protecting the corridor itself, for example, in the context of railbanking.

2. ***Federal dollars and permits should not be used to destroy our nation's heritage without consideration of less harmful alternatives.***

The whole purpose of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act is to ensure that federal resources are not used to harm historic properties without the consideration of impacts and alternatives. Of course, National Register listing or eligibility does not prevent private property owners from harming or even destroying their own historic properties, as long as no federal funding or federal permits are involved. But where taxpayer dollars are awarded, or federal regulatory authority is invoked, those public benefits must be conditioned on compliance with our federal laws that require historic preservation and other policies to be included in the process of planning specific projects.

3. ***The proposed exemption is overly broad.***

The sweeping breadth of the proposed exemption could potentially encompass the entire national network of railroads, including urban mass transit systems, not to mention historic depots and historic bridges, many of which have a high level of significance in their own right. The proposed exemption would potentially exclude from consideration virtually all conceivable property relating to the railroad—not merely the trackbed, the rails, ties, etc., but all "properties and facilities" of "railroad[s]".

The statutory definition of "railroad" provided by 49 USC § 20102 does little to narrow the broad exemption from historic resource review threatened by the proposed amendment. Section 20102(A) defines "railroad" as "any form of nonhighway ground transportation that runs on rails or electromagnetic guideways," specifically including language referring to transportation "systems," which would include a broad array of appurtenant—and likely historic—properties.[5]

Indeed, the statutory provision that excludes urban mass transit systems from the definition of railroad—49 U.S.C. § 20102(B) —is specifically omitted from the proposed definition, thus apparently expanding the scope of the proposed exemption to include all urban mass transit systems, many of which are highly significant historically, such as those in Boston, New York, and Chicago. Ultimately, the broad and ambiguous scope of the term "railroad" could sweep within the proposed exemption potentially all projects funded by the Federal Railroad Administration and the Federal Transit Administration.

4. Effective administrative mechanisms are available to address the railroads' concerns.

National Historic Preservation Act. The regulations issued by the Advisory Council on Historic Preservation to implement Section 106 of the National Historic Preservation Act provide several administrative mechanisms for addressing complex issues presented by categories of historic properties or federal actions that may need special treatment. Many of these administrative tools would be ideally suited for addressing the kinds of concerns raised by the railroads. For example, these mechanisms include the following:

- "Programmatic Agreements" (PAs), which streamline or eliminate review for minor actions that have little potential to affect historic resources. 36 C.F.R. § 800.14(b). For example, the North Carolina DOT has an existing PA signed in 2007, which provides a streamlined review process for "minor" transportation projects throughout the state. Why couldn't such a PA be developed specifically for rail projects? Indeed, the Alaska

[5] While the most restrictive meaning of "railroad" in Black's Law Dictionary refers to the track itself—"the road or way on which iron or steel rails are laid for wheels to run on"—the term also commonly refers to the entire enterprise operating on those rails, *Bradley v. Degnon Contract. Co.*, 120 N.E. 89, 91 (N.Y. 1918), including all the structures necessary to its operation. *See U.S. v. Denver & Rio Grande Ry. Co.,* 150 U.S. 1, 13 (1893) ("railroad" includes all structures necessary and essential to its operation, including the necessary appurtenances of ground adjacent to the right-of-way, station buildings, depots, machine shops, side tracks, turnouts, water tanks, etc.); *Smith v. Northern Pacific Ry. Co.*, 148 P. 393, 394 (Mont. 1915) ("railroad" incorporates all necessary appurtenances, as contemplated by Federal land grants to the railroads, including all structures, equipment, and machinery necessary to their operation). *See also Omaha & Council Bluffs Street Ry. Co. v. I.C.C.*, 230 U.S. 324, 334 (1913) (construing "railroad" to include "all bridges and ferries used or operated in connection with any railroad, and all the road in use by any corporation operating a railroad . . . , switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of . . . persons or property . . . , and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property") (quoting 24 Stat. at L. 379, ch. 104, as amended 34 Stat. at L. 584, ch. 3591).

Railroad has a PA in place that allows for the replacement of all of its historic timber bridges—further evidence that Section 106 is not an obstacle to necessary upgrades.

- "Program Comments" issued by the ACHP, which comment on an entire category of undertakings in lieu of individual reviews. 36 C.F.R. § 800.14(e). These have been used extensively by the Department of the Defense to accomplish Section 106 compliance for enormous numbers of historic properties. For example, in 2006 the ACHP issued program comments to address tens of thousands of historic ammunition production and storage facilities managed by the Defense Department nationwide. And in 2002 the ACHP issued program comments to address all Capehart-Wherry Era military housing nationwide.

- "Exempted Categories" issued by the ACHP, pursuant to 36 C.F.R. § 800.14(c). These carefully crafted and limited exemptions have been used recently by the Federal Highway Administration for the Interstate Highway System in 2005, and by the Federal Energy Regulatory Commission for historic natural gas pipelines in 2002. While we are not at all persuaded that an exemption is appropriate for railroad properties, at the very least it should be the ACHP and the Department of Transportation, rather than Congress, undertaking the complex task of attempting to define an exemption that would not sweep too broadly.

These administrative remedies should be given a chance to work, rather than having Congress address with a hatchet what should be addressed through a much more delicately crafted approach.

Department of Transportation Act. In addition to Section 106 of the National Historic Preservation Act, Section 4(f) has also been implemented through existing mechanisms for streamlining, and these have not been brought to bear in this case. For example, Section 6009 of SAFETEA-LU included a new exemption for "*de minimis*" impacts on resources protected by Section 4(f). This was a carefully crafted, consensus-based amendment, which the National Trust was actively involved in developing. We believe the "*de minimis*" exemption could be used to address many of the railroads' concerns regarding Section 4(f). In addition, the Federal Highway Administration has adopted a number of "Programmatic Section 4(f) Evaluations," which have been used to streamline review for Historic Bridges, Minor Actions, etc. The FHWA has also implemented detailed regulations, just recently revised at 23 C.F.R. Part 774, and a Section 4(f) "Policy Paper," to provide guidance to applicants regarding Section 4(f). We have seen no reason why these existing mechanisms would not address the concerns of the railroads, and they should certainly be fully evaluated before a statutory exemption is considered.

The fact that many of our nation's historic railroad corridors are actively and heavily used for freight and passenger traffic should not be a reason for exempting these resources from federal historic preservation laws. Other transportation agencies manage historic transportation corridors that are in active use, and manage them in a way that respects their

historic character by complying with Section 106 and Section 4(f). For example, the list of significant elements of the Interstate Highway System, which have been singled out by the State DOTs for their historic importance, and remain subject to historic preservation laws, includes the following historic road corridors, which are active and heavily traveled:

Pennsylvania Turnpike	(160 miles)
Columbia River Highway, OR	(60 miles)
Alligator Alley, FL	(30 miles)
Vail Pass, CO	(15 miles)
Glenwood Canyon, CO	(12 miles)

In addition to these examples from the Interstate Highway system, historic parkways such as the Baltimore-Washington Parkway (MD), George Washington Parkway (VA), Rock Creek Parkway (DC), Merritt Parkway (CT), Bronx River Parkway (NY), etc. are all actively used transportation corridors that are eligible for the National Register as entire corridors, and are managed in compliance with section 106 and Section 4(f).

In short, there are well-proven administrative mechanisms that would allow for the protection of rail corridors and associated historic properties while also allowing the full use of those resources.

5. *Reasons Why the Interstate Highway Model Won't Work for Historic Railroads*

The limited exemption in SAFETEA-LU for the Interstate Highway System, which is cited in the proposed amendment as a model for a railroad exemption, is a poor prototype with respect to protecting historic railroad resources.

- The national railroad network, which encompasses 270,000 miles, is vastly more extensive than the Interstate Highway network, at 47,000 miles, with an array of historic resources that is much greater in number, diversity, and significance than those covered by the Interstate Highway exemption. This proposed exemption would eliminate environmental and historic review for all rail corridors throughout the country, including thousands of historic bridges, historic rail corridors, and potentially historic depots and other facilities as well. In addition, all historic rail corridor abandonments would be exempt from historic preservation review.

- Furthermore, the process for creating a list of individual elements with special significance, which would essentially be "exempt from the exemption," would be much more difficult for railroad corridors than for the Interstate Highway system. The national network of railroad infrastructure is largely privately owned and controlled. Because railroad historic resources are numerous and scattered, surveys would be required to identify the historic properties and features with special significance. Therefore, in contrast to the role of the State DOTs, who own and control the Interstate highway system, and had already largely inventoried their historic transportation

infrastructure prior to the Interstate exemption, the process of gathering information for the list of significant individual elements of the railroad system would be highly unreliable, time-consuming, and costly.

- In the case of the Interstate Highway exemption, the Federal Highway Administration worked closely with the Advisory Council on Historic Preservation to comply with Section 106 *before* coming to Congress to seek a Section 4(f) exemption. By contrast, the railroads and the Department of Transportation have not even initiated those discussions.

Conclusion

America's railroad corridors and associated historic properties are essential to the American identity—its culture, history, and economy, past, present and future. In the absence of the protections afforded by Section 106 and Section 4(f), those corridors have no meaningful procedural guarantees for preservation consideration. No compelling showing has been made that the current preservation scheme is unduly burdensome on the railroads, or that a change in such a scheme is warranted. In particular, the Interstate Highway System is an inappropriate model for an exemption.

While legislation is too blunt an instrument to achieve the desired balance between preserving historical rail resources and the efficient and responsible use of those resources, there are well-proven administrative mechanisms either currently in place or available and not yet used, which could address the railroads' concerns. We are confident that any and all concerns the railroads may have can be appropriately addressed through a remedy arrived at through such a consensus process, and we respectfully ask Congress for the opportunity to do so. The National Trust stands ready and willing to participate in that process.

Railroad-Related National Historic Register Properties Incorporating Significant Rights-of-Way

Note: those listed below incorporate portions of the right-of-way larger than that usually associated with an average bridge or tunnel.

NHR Reference Number	State	County	City	Resource Name	Acreage	Notes
00000319	Arizona	Coconino	Williams	Grand Canyon Railway	1,682.0	Tourist Railroad
73000462	Colorado	Archuleta	Antonito	Denver and Rio Grande RR San Juan Extension	1,430.0	Portions operated as Cumbres and Toltec Scenic RR (Tourist)
76002290	Delaware	New Castle	Porter	New Castle and Frenchtown RR Right-of-Way	~25 miles	Abandoned
80000932	Delaware	New Castle	Hockessin	Wilmington and Western RR	73.0	Tourist RR
80002997	New York	Wyoming	North Java	Arcade and Attica RR	122.0	Tourist RR
81000078	Maryland	Allegany	North Branch	Western Maryland RR Right-of-Way between Mileposts 126 and 160	500.0	Abandoned
86002751	North Dakota	Foster	McHenry	McHenry Loop RR	32.5	Tourist RR
73000309	Massachusetts	Norfolk	Quincy	Quincy Granite Railway	0.7	Abandoned
76001616	Pennsylvania	Carbon	Jim Thorpe	Mauch Chunk and Summit Hill Switchback RR	47.0	Abandoned
66000666	Pennsylvania	Huntington	Rockhill Furnace	East Broad Top RR	500.0	Tourist RR
87000699	Utah	Box Elder	Park Valley	Central Pacific Railroad Grade Historic District	5,000.0	Abandoned
72001257	Utah	Box Elder	Ogden	Southern Pacific RR Lucin Cutoff Trestle	143.0	Abandoned
66000080	Utah	Box Elder	Promontory	Golden Spike National Historic Site	2,735.3	Not used by commercial RR; operated by NPS
94001423	Utah	Box Elder	Corinne	Transcontinental RR Grade	655.0	Abandoned
96000413	Utah	Summit	Echo	Union Pacific Park City Branch RR Grade	490.0	Abandoned
01000700	Virginia	Fairfax	Annandale	Manassas Gap RR Independent Line	11.9	Track never laid
74002019	West Virginia	Pocohontas	Cass	Cass Scenic RR	45.0	Tourist RR
93000693	Nevada	White Pine	Ely	Nevada Northern Railway East Ely Yard and Shops	40.0	Tourist RR
79003792	New Hampshire	Carroll	North Conway	North Conway Depot and Yard	5.0	Tourist RR

Testimony on Historic Preservation of Railroad Property and Facilities

Before the

Subcommittee on Railroads, Pipelines and Hazardous Materials

of the

House Committee on Transportation and Infrastructure

By

Patrick B. Simmons

Director, Rail Division, North Carolina Department of Transportation

Thursday, June 5, 2008

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Historic Preservation of Railroad Property and Facilities

Chairwoman Brown, Ranking Member Shuster and distinguished members of the Committee, my name is Patrick Simmons. I am Director of the Rail Division with the North Carolina Department of Transportation (NCDOT). I appreciate the opportunity to share my perspective on the impacts of historic preservation of railroad property and facilities.

NCDOT is blessed to have a full service rail program. Our program is nationally recognized for our work with intercity passenger rail service, and ridership is up more than 20% over the past seven months on our State-sponsored passenger trains, the *Piedmont* and *Carolinian*. We are developing the federally-designated Southeast High Speed Rail Corridor (SEHSR) that will link the existing Northeast Corridor with communities south through Virginia, North Carolina, South Carolina, Georgia, Florida and other states in the Deep South and west. We administer our State's highway-railroad crossing safety program and are proud to have partnered with Norfolk Southern Railway (NSR) and the Federal Railroad Administration (FRA) to create the Sealed Corridor. Later this year, USDOT will report to the Congress on how the Sealed Corridor has saved lives at highway-railroad crossings

We partner with NSR, CSX Transportation (CSXT) and the North Carolina Railroad (NCRR) Company in an ongoing program of infrastructure investments that improve safety, add network capacity and reduce travel times. We partner with the FRA to operate a railroad industry safety inspection program. We partner with NSR, CSXT, our state's two-dozen shortlines and communities to build sidings that enable new and expanded industrial development and job creation. We also acquire and hold rail corridors around the state to preserve them for future transportation use. We also partner with the Virginia Department of Rail & Public Transportation (VDR&PT), the Federal Highway Administration (FHWA), FRA and a community of some fifty (50) state and local agencies to develop the design and environmental evaluation of SEHSR. More information these programs can be found at www.bytrain.org and www.sehsr.org.

In 1849 our legislature authorized creation of the North Carolina Railroad (NCRR), the first company chartered in our State. The NCRR stretches 317 miles across the economic heart of North Carolina. More than 60% of our state's population and economy are within 15 miles either side of the NCRR corridor. Today, the state owns 100% of the shares of common stock in the NCRR. NCDOT and NCRR partner to build projects that will improve passenger and freight travel as well as looking for ways to help communities reach their economic potential.

Railroading is an important part of North Carolina's history and it is a foundation for our future economic development and mobility. A copy of our state railroad map is attached, see also http://www.bytrain.org/quicklinks/pdf/railmapdec07.pdf.

The points I will address include: 1) North Carolina's experience with application of the National Historic Preservation Act of 1966, as amended, (the Act) to development of a railroad *corridors*, 2) the impact of the Act on project delivery, including schedules and costs, 3) our nation is poised to partner with railroads and other private sector partners to leverage investment, build needed capacity and enhance mobility, and 4) the amendment offered by Representative Shuster during mark-up of H.R 6003, the Passenger Rail Investment and Improvement Act of 2008 is an excellent initiative to address this issue.

Historic Preservation of Railroad Property and Facilities

Recent and past application of the National Historic Preservation Act of 1966, as amended[1] (the Act) to designate freight and passenger railroad *corridors*, or any operating transportation *corridor* for that matter, as eligible for inclusion on the National Register of Historic Places by virtue of their historical importance is, I believe, a misapplication of intent. While well-meaning, application of the Act to railroad *corridors* can do more harm than good by impeding on the transportation deliverables sorely needed for the 21st Century.

Facilities

Without question, many great works of railroad engineering and architecture have been preserved for current and future generations and the Act has played a role with respect to some of these resources. There is also no question that many individual railroad structures deserve the protection they receive. The Act has and will continue to be applied to them in a way that allows for continued use and development.

For example the North Carolina Department of Transportation received from the National Trust for Historic Preservation the 2007 John H. Chaffee Trustees Award for Outstanding Achievement in Public Policy[2]. This award recognized our railway station preservation and improvement program. This recognition was for the body of work exhibited by our rehabilitation of some 14 historic passenger stations. Together we worked with our State Historic Preservation Office (SHPO) and local communities to restore these facilities to modern use while at the same time respecting their historic character. See also http://www.bytrain.org/istation/

In this era when we need timely and effective responses to real world transportation capacity and mobility needs we can not afford to add significantly to our project delivery timetables nor can we suffer further cost escalation. For example, since 2002 NCDOT's Construction Cost Index has increased an average of 15% annually. This number is multiplied year on year.

Railroad Corridors

However, the designation of entire active railroad *corridors* as historic districts, or as eligible for inclusion on the National Register of Historic Places presents procedural, financial and legal obstacles to the continued operation of vital transportation services. Such designation extends federal protections of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act to the *corridor* itself and to any and all components of the operating railroad within that *corridor*.

Historic *corridor* designation affects routine maintenance and safety improvements to roadbed, bridges and culverts, embankments, ballast, ties, rail, equipment, highway-railroad at-grade crossings, signal systems and minor structures. Regardless of designation, these components must be continually maintained, updated, and replaced according to engineering, safety, and economic considerations in order to remain safe and viable, and to meet changing transportation needs.

[1] The National Historic Preservation Act of 1966, as amended, Public Law 89-613, 116 USC 470 et seq
[2] http://www.bytrain.org/istation/pdf/chafeeawardrelease.pdf

Historic Preservation of Railroad Property and Facilities

The review process under the Act and Section 4(f) is complex. Applying such designation to an entire *corridor* is an unreasonable burden of administrative review and government "red tape" that makes federal support for even the smallest routine maintenance and safety upgrades unrealistically time consuming and infeasible.

NCDOT, in partnership with VA, is conducting engineering and environmental work on the portion of the SESHR route that links our state capitols. The VA SHPO required evaluation of the *corridor* from Richmond south to the state line to determine eligibility of the *corridor* for the National Register. Shortly thereafter the NC SHPO requested the same evaluation for the *corridor* from Raleigh to the state line.

It should be noted that every structure within the corridor of interest (ranging up to 1,000 feet wide and including bridges, buildings, tracks, and supporting structures, etc.) had already been evaluated for historic significance.

To comply with this request added 6 months to the project schedule and some $150,000 in direct and indirect costs to complete the necessary documentation. This request from the SHPOs was received after working on the project since 1992 and after receiving a previous federal record of decision[3]. We have dutifully filed a 75-page report documenting the history of the railroad *corridor*[4]. This is not the providence of government but rather academia and scholars.

Based upon the SHPO final determination of eligibility, further time and resources will be required to complete evaluation of the *corridor*, and every future expenditure of federal funds in the *corridor* will require us to address Section 4(f) and the Act, adding substantial costs in time and resources.

Not only does designation of a railroad *corridor* add time and costs to project schedules, it can affect grants, loans, and the applications for federal funds. Designating a railroad *corridor* also can impact safety by seriously impairing the timely flow of funds for grade crossing and other safety improvements. It could discourage railroads from seeking available federal financial assistance and it would impair the ability of governments to provide such assistance, diminishing the safety of an operating transportation system.

In short, considering and complying with rules for railroad *corridors* eligible for the National Register delays and squanders federal resources intended to support, to improve, and to continue the operation of the nation's railroads by requiring documentation and bureaucratic approvals that take time, complicate relationships with the private sector, and have little or no beneficial effect.

Operating railroads are a vital productive part of the nation's built environment. Just like our highways, inland waterways, seaports, and airports, railroads played a major role in the development of this nation and continue to be a vital part of our economy and landscape. They

[3] Record of Decision for the Tier I Southeast High Speed Rail Corridor, October 2002
[4] Supplement to Phase II Architectural Resources Survey Report, Southeast High Speed Rail Project Number 9.9083002, STIP Project Number P-3819

must be given every opportunity to thrive, to be safe, to operate efficiently, and to continue to exist as part of our living heritage for future generations of Americans.

Impact on Public Private Partnerships

The National Surface Transportation Policy and Revenue Study Commission (Commission) reported to the Congress late last year on a series of recommendations intended to modernize our nation's transportation infrastructure[5]. The report included recommendations to:

- Significantly increasing investment in surface transportation, including investing at least $225 billion annually from all sources (Federal, state, local, and private) for the next 50 years to upgrade to an advanced surface transportation system capable of sustaining strong economic growth;

- Accelerating the time between conception and delivery of major transportation projects to reduce costs while still addressing environmental concerns. Many federally-funded projects take between 10-13 years to complete after they are proposed, largely due to lengthy approval processes. Given the high rate of construction inflation, for example, simply reducing the time between conception of projects and delivery could save billions of dollars as well as bringing new facilities online more rapidly.

The Commission also recommended public investment in improved Freight Transportation to Enhance U.S. Global Competitiveness and Intercity Passenger Rail: A Program to Serve High-Growth Corridors by Rail.

Especially relevant to this hearing, the Commission also recommended Environmental Stewardship: Transportation Investment Program to Support a Healthy Environment. This consolidated program replaces several existing environmental programs, providing more flexibility to States in their efforts to mitigate the environmental impacts of transportation.

Central to this program of recommendations is the premise that public private partnerships will play an increasingly important role in the design, construction and operation of rail, intermodal and other facilities. But when the Act and Section 4(f) are applied to the recommendations of the Commission, I believe these requirements will serve to significantly lengthen project delivery and add costs to these programs.

Modal Competition

While recognizing that railroads are historically important, I recommend that a provision be added to Title 49 to clarify that only certain particularly important elements of railroads, and not entire operating *corridors*, warrant consideration for eligibility for the National Register of Historic Places.

[5] Report of the National Surface Transportation Policy and Revenue Study Commission, December 2007

Historic Preservation of Railroad Property and Facilities

SAFETEA-LU included just such a provision at Section 6007 entitled Exemption of Interstate System[6]. This provision exempting interstate highways from historic designation effectively places rail at a competitive disadvantage. It also favors public investment in highways versus developing public private partnerships between states and railroads.

By not leveling the playing field our program of infrastructure investment is further constrained from taking advantage of the enhanced economy, efficiency and productivity that the rail mode can offer. Should rail be the only interstate mode that carries this additional responsibility?

Our Class I railroads already are wary of governmental regulation—and rightfully so in this case. I believe the freight railroads will require to critically evaluate whether or not significant elements of their network may be constrained from further development and capacity enhancements. These companies are conservative and risk-adverse. A requirement such as historic designation that can apply broadly across their network will produce a setting that will make the task of entering into public-private partnerships all the more difficult.

Conclusions

- Designating railroad *corridor*s as historic adds significant time and costs to project development,
- Designating railroad *corridor*s as historic is an impediment to adding network capacity and enhancing safety,
- Designating railroad *corridor*s as historic will hinder development of public private partnerships, and
- Designating railroad *corridor*s as historic will not significantly add to the protection of historic resources.

Thank you for the opportunity to speak with you today. I appreciate your attention and look forward to answering your questions.

[6] Public Law 109-59—August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

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