rails·to·trails
conservancy

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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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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.