

**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**

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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 (NCR) 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](http://www.bytrain.org) and [www.sehsr.org](http://www.sehsr.org).

In 1849 our legislature authorized creation of the North Carolina Railroad (NCR), the first company chartered in our State. The NCR 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 NCR corridor. Today, the state owns 100% of the shares of common stock in the NCR. NCDOT and NCR 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<sup>1</sup> (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 21<sup>st</sup> 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<sup>2</sup>. 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.

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<sup>1</sup> The National Historic Preservation Act of 1966, as amended, Public Law 89-613, 116 USC 470 et seq

<sup>2</sup> <http://www.bytrain.org/istation/pdf/chafeewardrelease.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 SESHHR 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<sup>3</sup>. We have dutifully filed a 75-page report documenting the history of the railroad *corridor*<sup>4</sup>. 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

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<sup>3</sup> Record of Decision for the Tier I Southeast High Speed Rail Corridor, October 2002

<sup>4</sup> Supplement to Phase II Architectural Resources Survey Report, Southeast High Speed Rail Project Number 9.9083002, STIP Project Number P-3819

## Historic Preservation of Railroad Property and Facilities

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<sup>5</sup>. 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.

SAFETEA-LU included just such a provision at Section 6007 entitled Exemption of Interstate System<sup>6</sup>. This provision exempting interstate highways from historic designation effectively

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<sup>5</sup> Report of the National Surface Transportation Policy and Revenue Study Commission, December 2007

## Historic Preservation of Railroad Property and Facilities

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 *corridors* as historic adds significant time and costs to project development,
- Designating railroad *corridors* as historic is an impediment to adding network capacity and enhancing safety,
- Designating railroad *corridors* as historic will hinder development of public private partnerships, and
- Designating railroad *corridors* 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.

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<sup>6</sup> Public Law 109-59—August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.