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FEDERAL UPDATE

National Trust Testifies Against Proposed Exemption for Railroad Facilities

National Trust Assistant General Counsel, Betsy Merritt, testified on behalf of the National Trust on June 5th before the House Subcommittee on Railroads, Pipelines and Hazardous Materials in opposition to an attempt by the railroad industry to exempt railroad facilities from Section 106 review under the National Historic Preservation Act and Section 4(f) of the National Transportation Act of 1966, the two most significant protections under federal law for historic and cultural resources.

The controversial proposal by the Alaska Railroad and the North Carolina Railroad seeks an exemption of historic railroad corridors and related properties and facilities from federal historic preservation laws, relying on the expansion of a provision in the most recent Surface Transportation law reauthorization (SAFETEA-LU) passed by Congress in 2005 that addressed the Interstate Highway System, 23 U.S.C. § 103(c)(5). 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. Furthermore, the original “*de minimis*” exemption could be used to address many of the railroads’ concerns regarding Section 4(f) rather than developing an entirely new and much broader exemption being sought by the railroad industry.

Ms. Merritt’s testimony emphasized that the National Trust strongly opposes such an exemption for the railroads as “inappropriate, unnecessary, unprecedented, and would inevitably encourage additional exemption requests” and that “Congress should ensure that the available administrative mechanisms [Section 4(f) and 106 processes] have been fully employed before even considering an expanded exemption. 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 historical 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]”.

To read the complete text of Ms. Merritt’s testimony, please visit http://www.preservationnation.org/issues/transportation/additional-resources/ESM_testimony_NRsubcte_RR-HP_06_05_08.pdf.

National Trust Testifies on Impact of OHVs on Cultural Resources

National Trust President Richard Moe testified before the Senate Energy and Natural Resources Committee on June 5th regarding the management and

Moe Testifies on
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on Cultural
Resources
Located on Public
Lands

limitation on the use of Off-Highway Vehicles (OHVs) on public lands in the effort to protect historic and cultural resources.

Mr. Moe's testimony highlighted four major shortcomings in the management of OHVs:

1. The vast majority of federally-owned land remains unevaluated and OHV planning decisions are frequently based on assumptions and models that are seldom verified through site-specific inventories; as a result, cultural resources are being damaged, destroyed, or looted by irresponsible OHV users before archaeologists or Native American tribes are ever provided with the opportunity to identify them or determine their significance.
2. Federal land management agencies are failing to uphold the requirements of Section 106 of the National Historic Preservation Act NHPA during the development and implementation of travel management plans for OHVs.
3. Enforcement of OHV designations and restrictions has been undermined by the lack of a meaningful law enforcement presence in culturally significant areas. There are simply not enough federal officers on the ground to enforce OHV designations and restrictions.
4. Finally, land management agencies respond and capitulate to local governments and OHV groups during OHV-use decisions instead of acting aggressively when cultural resources are threatened.

Mr. Moe concluded his testimony by calling on federal agencies to take decisive and immediate steps to manage OHV use to protect cultural resources through improved planning and more vigorous and consistent OHV-use enforcement.

To read the complete text of Mr. Moe's testimony, please visit http://www.preservationnation.org/issues/public-lands/additional-resources/Richard_Moe_Testimony_OHV_ENR-Cte_06_05_08.pdf.

Senate Restores Missing Trade Title in Farm Bill

Procedural
Hurdles and
Gaffes Force
Reintroduction of
Farm Bill with
Previously
Missing Title

On Thursday, June 5, the Senate passed a new farm bill that includes the trade title that was mistakenly left out of the version President Bush recently vetoed. However, the future of the new measure was in jeopardy earlier in the week when Senators Tom Coburn (R-OK) and Jim DeMint (R-SC) threatened to stall the measure because they objected to the bill. However, they dropped their procedural challenges after they were promised floor time to express their concerns with the measure. Although 14 of the 15 titles of the bill became law (P.L. 110-234) before Memorial Day, the Senate decided passing the entire farm bill again with the trade title was the safest way to finalize the measure and avoid legal challenges to it.

Appropriators To
Begin Marking
Up FY'09
Spending Bills for
Final Passage
Next Year

The President has threatened to veto the recently passed measure; however some say because the other Farm Bill measures passed overwhelmingly, he may quietly allow the new measure to become law. If not, both the House and Senate are prepared to override the President's veto.

Historic preservation language was not impacted by the recent Senate action. The National Trust is working closely with staff at the U.S. Department of Agriculture to ensure the historic preservation provisions in the farm law will be maintained during the regulatory process.

FY'09 Appropriations Cycle in the Starting Gate

The House and Senate adopted a FY'09 budget resolution (S Con Res 70) this week, paving the way for the appropriations subcommittees to begin their markups of individual spending bills the week of June 16th. The Appropriations subcommittee "cardinals" [chairmen] received their 302(b) budget allocations on May 20th, although they have not been publicly disclosed. However, appropriators have no intention of finishing the FY'09 appropriations cycle until next year because President Bush has threatened to veto any spending measure which exceeds the Administration's FY'09 proposed budget cap. The \$3.03 trillion budget resolution would allow Congress to appropriate \$24.5 billion more than the \$991.6 billion Bush requested in discretionary spending, when cap adjustments and advance appropriations are included. Preservationists are optimistic that the higher budget caps in the budget resolution will yield additional funding for the Historic Preservation Fund and the national preservation program for FY'09.

To that end, the National Trust and its preservation partners have requested \$115 million from Congress for the Historic Preservation Fund in FY'09, including: \$50 million for State Historic Preservation Offices; \$20 million for Tribal Historic Preservation Offices; \$30 million for Save America's Treasures; \$10 million for the Preserve America Program; and \$5 million for a National Inventory of Historic Properties.

Dayton Aviation Heritage National Historic Park Expansion Endorsed by National Trust

National Trust
Endorses Bill
Expanding
Dayton Aviation
Heritage National
Historical Park to
Include Wright
Brothers Factory
Buildings and
Home

The National Trust endorsed a bill (HR 4199) introduced by Reps. Michael Turner (R-OH) and Brad Miller (D-NC) this week expanding the Dayton Aviation Heritage National Historic Park (DAHNP) to include the Wright Company Factory buildings and Hawthorn Hill – the family home of Orville and Wilbur Wright until 1948.

The Wright Company Factory buildings in Dayton, Ohio, are the first American facilities specifically designed and built for the manufacture of airplanes. The Wright Brothers formed the company in 1909 to manufacture airplanes after the historic first flight in 1903. Hawthorne Hill, completed in 1914 and listed

in the National Register of Historic Places included many of the mechanical features designed by Orville which reflected his creative genius. In addition, for 34 years the house was a gathering place for the greats and near greats in the historic of American aviation. The inclusion of these sites into increase and complete the public's ability to interpret and appreciate the contributions of the Wright Brothers in the larger context of the heritage park.

To read the Trust's letter of endorsement, please visit http://www.preservationnation.org/take-action/advocacy-center/additional-resources/NTHP_support_letter_4199_Dayton_Aviation_Turner_Bill.pdf.

FHWA Proposal Would Eliminate Historic Traffic Signals in Historic Districts

Historic Traffic Signals Would Be Eliminated Under FHWA Proposal To Require "One-Size-Fits-All" Traffic Signals

The Federal Highway Administration (FHWA) is proposing to eliminate the 8"-diameter traffic-signal indication in the United States by requiring a single "one-size-fits-all" traffic-signal lens size in the United States, a size that would of necessity have to be large in order to satisfy worst-case visibility/speed scenarios. If this proposal were to be adopted, it would force U. S. cities to replace, over time, their older, smaller stoplights with new oversized lights that would not be in scale with their historic districts' streetscapes and architecture. Such a change in the traffic code would thus eliminate an attractive existing option for "context-sensitive" traffic engineering in historic districts. FHWA is seeking public comment on this proposed amendment to the Manual on Uniform Traffic Control Devices (MUTCD) through July 31.

Preservationists and Main Street activists are urged to register their opposition to the FHWA's proposal. To learn more please visit <http://www.preservationnation.org/issues/transportation/historic-traffic-signals.html>.

STATE AND LOCAL UPDATE

Ohio's Historic Preservation Tax Credit Awaits Governor's Signature

Ohio State Rehab Credit Pilot Program Gets Makeover Along with Two-Year Extension

As previously reported, the Ohio Department of Development capped the state's two-year pilot Historic Preservation Tax Credit at \$120 million instead of the 100 projects mandated for FY 2008 by legislators. Last week, proposed extensions to the program (House Bill 554 and Senate Bill 335) both passed with some key differences from the original tax credit program.

The bill awaiting the Governor's signature would:

- a) extend the historic building rehabilitation tax credit for two additional years, and eliminate the July 1, 2008 to June 30, 2009 application period;
- b) reserve \$45 million of each additional year's total new credit awards for credit applications previously filed but not approved before the former 100-project quota was attained;
- c) eliminate the cost-benefit analysis from the current approval criteria, but require the Director of Development to consider the geographic location of a project site and regional distribution of all rehabilitation tax credits throughout the state when approving applications;
- d) limit the amount of new credits awarded to \$5 million per project and \$60 million per year for all projects; and
- e) make the credit non-refundable for 2010 and 2011, except for the corporate franchise tax credit, which will remain refundable.

California Voters Defeat Regulatory Takings Measure

On June 3, California voters defeated Proposition 98, a measure cloaked as eminent domain reform, but would have wiped out regulations intended to protect California's heritage and environment. Specifically, Prop 98 would have prohibited laws and regulations that "transfer an economic benefit to one or more private persons at the expense of the private owners." However, it would also have disallowed important environmental and heritage protection, including protection of coastal areas, farmland and ranchland and cultural and historic sites. The National Trust advocacy efforts helped to defeat this potentially harmful measure.

To learn about the measure, visit www.no98yes99.org.

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