



April 9, 2018

The Honorable John Barrasso
Chairman
U.S. Senate Committee on Environment
and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
U.S. Senate Committee on Environment
and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Shuster
Chairman
U.S. House Transportation &
Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20510

The Honorable Peter DeFazio
Ranking Member
U.S. House Transportation &
Infrastructure Committee
2164 Rayburn House Office Building
Washington, DC 20510

Dear Chairmen Barrasso and Shuster and Ranking Members Carper and DeFazio:

We urge you to protect and strengthen America's commitment to historic preservation as the committees of jurisdiction develop implementing legislation for the Trump Administration's \$1.5 trillion infrastructure plan.

The Coalition for American Heritage (the "Coalition") represents heritage professionals, scholars, small businesses, non-profit groups, and history-lovers from across the country who work together to support and preserve our nation's heritage resources. These resources are essential engines of economic development for communities across America.

The National Trust for Historic Preservation (National Trust) is a private, nonprofit organization chartered by Congress in 1949 to facilitate public participation in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. Congress intended the National Trust "to mobilize and coordinate public interest, participation and resources in the preservation and interpretation of sites and buildings." With headquarters in Washington, D.C., nine field offices, 27 historic sites, more than one million members and supporters, and a national network of partners in states, territories, and the District of Columbia, the National Trust works to save America's historic places and advocates for historic preservation as a fundamental value in programs and policies at all levels of government.

We agree that federal investment in our country's aging infrastructure in partnership with states, localities, and the private sector is overdue and is critical to the communities where we work and live. Any infrastructure plan must safeguard, and not undermine, the substantial progress made in recent years by all levels of government, in partnership with the private sector, to preserve our nation's historic resources.

We share the Trump Administration's goal, as noted in its Legislative Outline for Rebuilding Infrastructure in America ("the plan"), of increasing the efficiency of the permitting process while delivering positive outcomes. We, however, share the following areas of concern:

- **The plan creates a "de minimis" federal contribution exemption from National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) compliance.** We are concerned by the Administration's suggestion that projects with "de minimis" federal funding be exempted from federal permitting requirements. We are particularly concerned with how "de minimis" would be defined under this proposal. Following current NHPA and NEPA procedures, small projects that have minimal impacts to the environment are processed quickly and efficiently, with no delay in project delivery or increased costs. Yet some small projects can have potentially large negative impacts on cultural resources, and these projects should not be exempted from review. Existing NEPA and NHPA procedures identify those small projects that do have the potential to result in extensive environmental and historic preservation impacts. The Administration's proposed changes would eliminate the review of these types of small projects, resulting in potentially significant adverse impacts to the environment and heritage resources.
- **The plan imposes arbitrary deadlines that will foreclose public participation.** While we believe that the permitting process should be predictable, consistent and efficient, the plan's proposal to impose deadlines on reviews is misguided. The public should have the ability to inform decisions about federal undertakings in their communities. Most projects currently submitted for review are completed within a reasonable time period, and arbitrarily cutting off public input will lead to poorly executed projects that lack community support. In addition, we oppose the plan's proposal to reduce the statute of limitations for legal challenges to hold agencies accountable for their decisions.
- **The plan misunderstands Section 4(f) and Section 106 reviews.** Current law requires transportation projects to undergo review under Section 106 of the NHPA and Section 4(f) of the Department of Transportation Act of 1966 when historic properties will be used in the project. We disagree with the plan's assertion that these reviews are redundant. These reviews serve different purposes and result in different outcomes. Section 4(f) *requires* that federal transportation projects avoid or minimize harm to our nation's heritage. In contrast, Section 106 requires federal agencies to merely *consider* the harmful effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment.

Furthermore, while there is no data available to specifically track the number of Section 4(f) reviews, a 2014 Government Accountability Office report to Congress notes that the Council on Environmental Quality (CEQ) estimates that the overwhelming majority (95%) of all NEPA-required analyses are "categorically excluded" (CE) from more comprehensive review, including Section 4(f) review. Of the remaining five percent of projects, CEQ estimates that about four percent are subject to an Environmental Assessment, and less than one percent go through an Environmental Impact Statement, the most thorough environmental project review. The report also noted that the Federal Highway Administration

(FHWA) estimates 96% of its highway projects were processed as CEs – an even higher rate than for the federal government as a whole. The vast majority of transportation projects, therefore, move quickly and efficiently through the environmental and historic preservation review process. As we move forward with implementation of FAST Act streamlining measures, we strongly encourage significantly better federal tracking of project review data, including the number and average processing times of section 4(f) reviews, to ensure fact-based policy perspectives when considering future project review efficiencies.

- **The plan encourages gas and oil pipeline construction on lands administered by the National Park Service.** Congress has reserved the prerogative to approve gas pipelines on National Park lands because of the significance of these lands to the American people. Units of the National Park System are the result of Congressional action, or in some instances, Presidential designation of National Monuments authorized by the Antiquities Act. The Administration’s proposal would grant unilateral authority to the Secretary of the Interior to approve gas and oil pipelines on these lands. We believe that Congress should retain its authority to make this decision for this special category of nationally significant protected public lands.
- **The plan shortchanges the Land and Water Conservation Fund (LWCF).** We support the LWCF, which has provided at least \$600 million in funds for purchase and protection of historic and cultural sites across the country, including many important historic battlefields. We oppose the plan’s proposal to eliminate the requirement to transfer proceeds from the disposal of surplus property to the LWCF. We also oppose a provision that would eliminate the need for National Park Service reviews for transfers of land that has been purchased with LWCF funds. Doing so would threaten the integrity of LWCF projects and undermine the promise of public lands devoted to conservation and outdoor recreation.
- **The plan eviscerates a key federal historic preservation tool.** We strongly oppose a provision in the Administration’s plan (Section VI, part B) allowing the federal government to sell historic surplus federal properties in the open market to the highest bidder. This provision does not carry a historic preservation or public notice and comment obligation, so any entity acquiring a historic property could simply choose to demolish it. This is not in the public interest. Streamlining the sale and demolition of historic federal property for private development will result in the permanent loss of historic character and significance, as well as potential economic value. The provision also undercuts the National Park Service’s Historic Surplus Property Program, which has successfully provided state and local governments the option of acquiring historic buildings and adapting them for new and often improved economic uses while preserving their historical character and honoring their heritage and cultural significance.

We strongly support efforts to make the federal infrastructure project review process more efficient, and numerous efficiencies can be achieved without undercutting protections for our nation’s historic sites.

Reviewing the impact of infrastructure projects on historic and environmental resources often occurs too late in the project development process. Those late reviews often require last-minute changes to the design of a project, which can prolong the development process, delay construction, and add costs, causing frustration to project planners. Likewise, resource protection advocates and the public are often dissatisfied because last-minute modifications to a project are often inadequate to correct design flaws and avoid or reduce impacts.

Instead of waiting until the final stages of the project *development* process, the historic preservation and environmental reviews should be conducted early in the project *planning* process, when most project elements—purpose, location, alignment, and scale—are still fluid, to ensure that issues and concerns affecting historic and environmental resources are properly considered and addressed. Early participation in project planning enables preservation planners to work with project sponsors to plan, design, and develop projects that avoid harm to historic and cultural resources, lessen conflict, and expedite project delivery.

Rather than arbitrarily short-changing the permitting review process, we advocate for improving the use of existing tools to reduce costs and delays. Many of these tools are already Congressional mandates that have not been enforced. In particular, we recommend the following initiatives:

- Fund efforts to digitize historic resource surveys for state historic preservation offices (SHPOs) and tribal historic preservation offices (THPOs) so that a complete record of inventoried historic places is available in GIS format. According to an April 2014 survey of SHPOs across the country conducted by the National Conference of State Historic Preservation Officers, only 52% of inventoried historic resources in our nation have been digitized. Of these digitized resources, a much smaller percentage is linked to a GIS-based database (most are simply scanned pages of paper reports). A GIS-based approach to project planning and environmental review has been embraced by the Federal Permitting Improvement Steering Council—created by Title 41 of the FAST Act (FAST-41)—which includes “Use of GIS and Other Tools” as one of eight best-practice categories in its Congressionally mandated annual report, *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects*.

In addition to digitizing existing databases, the federal government should expand its support for predictive models that anticipate where cultural resources are likely to be discovered. A GIS tool that accurately predicts areas of high, medium, and low risk for encountering such cultural resources will allow DOTs to plan projects in ways that avoid and minimize adverse impacts—leading to shortened review times and expedited project schedules. We note that USDOT has funded the development of such models in Florida, Minnesota, North Carolina, Pennsylvania, and Texas.

- Enforce concurrent review guidelines already available for agencies’ reviews.
 - MAP-21 directs agencies to coordinate and carry out reviews concurrently, instead of sequentially, in conjunction with the NEPA review process. Similarly, Title 41 of the FAST Act (FAST-41) requires state and federal permitting reviews

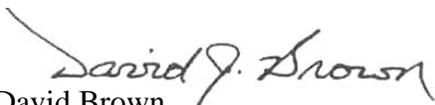
to run concurrently for a “covered project,” provided that doing so does not impair a federal agency’s ability to review the project.

- Increase use of programmatic approaches to environmental and historic preservation reviews. This is the proper, existing mechanism to exempt certain classes of federal actions from full NHPA review.
- Improve and make universal the merging of NEPA and Clean Water Act section 404 permitting processes, with the U.S. Army Corps of Engineers issuing a 404 permit at the end of the NEPA process, based on the information generated by the NEPA review, as opposed to the all-too-often current practice of the Corps conducting a separate and subsequent permit review.
- Improve and increase opportunities for public involvement during project planning stages and early stages of project development. This provides the public an early opportunity to voice concerns about project impacts on their community, which then can be addressed early, thus avoiding or reducing subsequent controversies and conflicts.

Through landmark legislation, like the NHPA, Congress has affirmed the social, cultural, and economic importance of preserving America’s heritage resources. We ask that you continue this commitment.

Preservation of America’s historic treasures can and should be accomplished in tandem with the continued growth and development of our nation’s infrastructure. We look forward to working with you to ensure that infrastructure projects proceed efficiently and with effective protection of our irreplaceable historic heritage.

Sincerely,



David Brown
Executive Vice President & Chief Preservation Officer
National Trust for Historic Preservation



Marion Werkheiser
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