

April 26, 2019

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

Dear Chairman Barrasso and Ranking Member Carper,

We urge you to protect and strengthen America's commitment to historic preservation as the U.S. Senate Committee on Environment and Public Works begins consideration of legislation to reauthorize our nation's surface transportation laws.

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.

The Coalition for American Heritage (the "Coalition") represents more than 350,000 heritage professionals, scholars, small businesses, non-profit groups, and history-lovers from across the country. Founded by the American Anthropological Association, American Cultural Resources Association, Society for American Archaeology, and Society for Historical Archaeology, we work together to support and preserve our nation's heritage resources. These resources are essential engines of economic development for communities across America.

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.

There is no need to amend Section 4(f) and Section 106 historic resource review requirements. Current law requires transportation projects to undergo review under Section 106 of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act when historic properties will be affected or "used" by the project. These two provisions are not redundant or duplicative. These reviews have different standards and result in different outcomes. Section 4(f) *requires* that federal transportation projects avoid or minimize harm to

our nation’s historic resources. In contrast, Section 106 requires that federal agencies 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 specific data available to 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 reviews, including Section 4(f) reviews. 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. The vast majority of transportation projects, therefore, move quickly and efficiently through the environmental and historic preservation review process. As we consider an infrastructure package and transportation reauthorization legislation, significantly better federal tracking of project review data, including the number and average processing times of Section 4(f) reviews, would help ensure fact-based policy perspectives when considering future transportation project review efficiencies.

To make the historic and environmental review process for infrastructure projects more efficient, we must improve the tools available to project sponsors during the infrastructure project *planning* process. 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 to historic resources.

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 by amending historic resource review requirements, 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 a searchable GIS format. If, for example, the Congress were to consider a \$1 trillion infrastructure plan, an investment of \$50 million

to \$100 million to develop such databases—or .005 to .01 percent of a trillion-dollar proposal—would give infrastructure project sponsors the tools and certainty they need to plan for and avoid historic resources long before any permitting conflicts could arise.

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. And the federal Advisory Council on Historic Preservation, in coordination with nongovernmental stakeholders and other federal agencies that sit on the Federal Permitting Improvement Steering Council, has initiated a task force to study and make recommendations for the most effective approaches to using data, mapping and predictive model technologies in order to avoid permitting conflicts and make the historic resource review process as efficient as possible.

- 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,



Thomas J. Cassidy, Jr.
Vice President for Government Relations and Policy
National Trust for Historic Preservation



Marion Werkheiser
Policy Director
Coalition for American Heritage