

# PROPOSED SECTION 106 EXEMPTION FOR RAIL RIGHTS-OF-WAY

## AGENDA

- **Introductions**
- **Purpose & Logistics**
- **Overview**
- **Key Definitions**
- **Scope of the Exemption**
- **Two Pronged Approach**
- **ACHP's Implementation**
- **Participant feedback/comments**
- **Next Steps**

# INTRODUCTIONS



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# FIXING AMERICA'S SURFACE TRANSPORTATION (FAST) ACT

- **Section 11504 of the Act directs the Secretary of Transportation to submit a proposed 106 exemption of railroad rights-of-way to the Advisory Council on Historic Preservation (ACHP).**
- **Consistent with the exemption for interstate highways approved in 2005.**

# PURPOSE & LOGISTICS

## **Purpose:**

**Describe USDOT's efforts  
to develop the proposed exemption**

**Obtain your input on the scope of the proposed  
exemption and the approaches described in this  
presentation**

## **Logistics:**

**Presentation  
Comments**

# PURPOSE & LOGISTICS

## Comments:

**Thank you for submitting comments/questions ahead of time.  
Please use the chat box to enter additional  
comments/questions during this webinar.**

**USDOT will consider your comments as we continue to develop  
the draft exemption and prior to formal submittal of a proposed  
draft to ACHP**

**ACHP will seek formal comments on the DRAFT exemption  
through the Federal Register**

# OVERVIEW: WE WANT TO HEAR FROM YOU

- SHPOs, Deputy SHPOs & Staff
- THPOs, Tribes, NHOs
- Preservation Interests
  - ACHP
  - NATHPO
  - NCSHPO
  - NTHP
- **Transportation Entities**
  - State DOTs & rail agencies
  - Transit agencies
  - Passenger rail operators
  - Freight rail
  - National transportation associations

# OVERVIEW: USDOT PARTICIPATION



**Federal Railroad Administration (FRA)**  
**Federal Transit Administration (FTA)**  
**Federal Highways Administration (FHWA)**  
**USDOT Office of the Secretary (OST)**

# OVERVIEW: MODAL PROGRAMS, SECTION 106 TRIGGERS & TRANSPORTATION ENTITIES SERVED

## FTA

- Formula and discretionary grants and loans
- About 70 grantees with rail-related properties
- Regional transit authorities, local gov't, State DOTs, and public-private partnerships

## FRA

- Safety oversight, discretionary grants, and loans
- Amtrak, State DOTs, local gov't, joint ventures & private companies

## FHWA

- Formula and discretionary grants and loans
- State DOTs, federal and Indian lands, local public agencies, public-private partnerships



# SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

- **Directs Federal agencies to consider the effects of undertakings and afford ACHP a reasonable opportunity to comment.**
  - **Undertakings are: federally-funded projects, permit actions, other federal approvals**
- **Section 106 steps:**
  - **Initiate Section 106**
    - **Establish an undertaking**
    - **Identify ways to involve the public and consulting parties**
  - **Identify Resources**
    - **Establish Areas of Potential Effects (APE)**
    - **Determine whether properties in the APE are listed in or eligible for listing in the National Register of Historic Places**
  - **Assess adverse effects to historic properties**
  - **Resolve adverse effects**
- **Program alternatives**

# OVERVIEW: WHY?

- **FAST ACT requires that USDOT develop a proposed exemption & that ACHP issue a final exemption**
- **Ensure safe, efficient, and continued operations of our nation's railroads and rail transit systems**
- **Investments are needed to maintain transportation infrastructure**
  - **Federal financial assistance = Section 106 trigger**

# OVERVIEW: ACTIVITIES TO DATE

- **Internal USDOT discussions**
- **Informal meetings with:**
  - **Advisory Council for Historic Preservation**
  - **National Conference of SHPOs**
  - **National Association of THPOs**
  - **National Trust for Historic Preservation**
- **Development of a Draft Report on the Historic Context of Rail Transit**
- **Information-sharing webinar with THPOs and Tribal Representatives**
- **Information-sharing webinar with 2012 Stakeholder Group from PRIIA-mandated FRA Section 106 and 4(f) Study**

# EXAMPLES OF UNDERTAKINGS: ROUTINE MAINTENANCE

- **Ballast, tie, and rail replacement**
- **“State of Good Repair” projects (stations, bridges, culverts, tunnels, retaining walls, etc.)**
- **Repair and replacement of communication, signal systems and catenary systems**
- **Repair and replacement of safety, security and ADA measures**

# EXAMPLES OF UNDERTAKINGS: UPGRADES FOR SAFETY OR OPERATIONS

- **Railroad crossing safety improvements**
- **Signal, train control & communications technology upgrades**
- **Conversion of diesel power to electric power**
- **Track reconfigurations (e.g., realignment and straightening of curves)**

# EXAMPLES OF UNDERTAKINGS: CAPACITY IMPROVEMENTS WITHIN ROW

- **Construction of equipment maintenance facilities in railyards**
- **Construction or re-installation of an additional track or siding**
- **Increasing clearance to accommodate modern train cars and double-stack containers**
- **Platform modifications (boarding height, length)**

# EXAMPLES OF UNDERTAKINGS: CHANGE IN TRANSPORTATION USE

- **Introduction of a new service (e.g., light rail transit) within an existing railroad ROW**
- **Conversion of inactive or abandoned rail lines to other transportation uses (e.g., pedestrian or bicycle trails)**

# SUMMARY OF COMMENTS FROM EARLY OUTREACH

## 1. Definitions and Terminology

- What is railroad ROW?
- What is the difference between “exemption” and “exclusion”?

## 2. What is the scope of the exemption?

- Would it apply to abandoned or existing railroad ROW?
- What about archaeology?
- What about roadway/rail crossings?
- Would it include new construction?
- Would it be property based or activity based?

## 3. Identification of Exclusions & Implementation

- How would exclusions (excluded properties) be identified?



# Theme # 1

## Definitions and Terminology

# KEY DEFINITIONS: RAIL ROW

**Railroad and Rail Transit Rights-of-Way (“rail ROW”)** means the land and infrastructure that have been developed for existing or former intercity passenger rail, freight rail, or rail transit operations, or that are maintained for the purpose of such operations.

Rail ROW includes current or former railroad or rail transit lines regardless of current ownership and whether or not there is rail service operating on the railroad or rail transit line. It does not include land that was never developed and lacks visual evidence of historic railroad or rail transit use. Rail ROW includes, and may be identifiable by the presence of, infrastructure that has a demonstrable relationship to the function and operation of a railroad or rail transit system that commonly includes but is not limited to the rail properties [listed on the next slide].

# KEY DEFINITIONS: RAIL PROPERTY

**Rail properties** means infrastructure that has a demonstrable relationship to the **function and operation** of a railroad or rail transit, including but not limited to: rails and tracks, ties, ballast, rail beds, signal and communication systems, switches, overhead catenary systems, interlockings, signage, traction power substations, passenger stations/depots and associated infrastructure and utilities, freight transfer facilities, boarding areas and platforms, boarding platform shelters and canopies, bridges, culverts, tunnels, retaining walls, ancillary facilities, ventilation structures, equipment maintenance and storage facilities, railyards, parking lots and structures, landscaping, passenger walkways, and security and safety fencing.

# KEY DEFINITIONS: RAIL PROPERTY (CON'T)

**Rail properties do not include properties with no demonstrable relationship to the function and operation of a railroad or rail transit system, such as: adjacent residential, commercial or municipal buildings; archaeological resources underneath rail ROW that are unrelated to the railroad or rail transit line; or property unrelated to existing or former railroads and rail transit lines that is proposed to be used for new rail infrastructure.**

# KEY DEFINITIONS: PROJECT SPONSOR

**Project Sponsor** means an entity such as a state, tribal or local government, joint venture, or private company that is eligible to receive financial assistance under a federal transportation-related financial assistance (e.g., grant, loan) program.

# KEY DEFINITIONS: EXEMPTION

An “**exemption**” is a **Section 106 Program Alternative** allowable under **Section 800.14** of the ACHP’s regulations.

c)(1) ...may be exempted from review..., if the program or category meets the following criteria:

- (i) The actions within the program or category would otherwise qualify as “undertakings”...
- (ii) The potential effects of the undertakings within the program or category upon historic properties are **foreseeable and likely to be minimal or not adverse**;
- (iii) Exemption of the program or category is consistent with the purposes of the act.

# KEY DEFINITIONS: EXCLUSION

**An **exclusion** (or excluded property or property type) is a rail property of national or certain state or local importance that will remain subject to Section 106 review**

- **except for exempt activities, as will be discussed in further detail later in this presentation.**

# Theme #2

## Scope of the Exemption



# WHAT IS THE SCOPE OF THE EXEMPTION?

- **Federal undertakings that are foreseeable and likely to be minimal or not adverse and that:**
  - Are located within existing rail ROW;
  - Involve rail properties; and
  - Are for the intended purpose of routine maintenance, improvements, and upgrades to transportation infrastructure
- **Available for use by any federal agency with undertakings meeting the above criteria**

# EXEMPTION CONCEPT: TWO-PRONGED APPROACH

- (1) Activity-based Approach: Exempt routine activities listed in the exemption from Section 106 review**
  - Would be immediately available for use upon ACHP's approval
  - Applicable to any rail property located within rail ROW
  
- (2) Property-based Approach: Allows greater scale undertakings than activity-based approach to be exempt from Section 106 review, but does not apply to rail properties excluded for their importance**
  - **Optional** Project Sponsor-led identification of excluded properties
  - Excluded properties would remain subject to Section 106 review, unless the undertaking falls within the list of exempt activities under the activity-based approach

# EXEMPTION WOULD NOT APPLY TO:

- (1) Historic properties located outside of the rail ROW**
- (2) Historic properties located within the rail ROW that do not have a demonstrable association with the function and operation of a railroad or rail transit system.**

# EXEMPTION WOULD NOT APPLY TO:

- (3) Potential archaeological sites located within the rail ROW that are not associated with railroads or rail transit systems**
  
- (4) Properties of religious and cultural significance to federally recognized Tribes**

# EXEMPTION WOULD NOT APPLY TO:

- (5) “Greenfield” construction of new railroads or rail transit lines**
  
- (6) Removal of a railroad or rail transit line from transportation use**
  
- (7) Excluded properties, as will be discussed later in this presentation**

# EXAMPLES OF *PROPOSED* EXEMPT ACTIVITIES

- Replacement of rails, ties, and ballast
- Replacement of component parts of signal, communications and catenary systems
- Replacement of underground utilities within existing disturbed footprint, and other ground disturbing activities within previously disturbed ground or fill

# EXAMPLES OF *PROPOSED* EXEMPT ACTIVITIES (CON'T)

- **Minor station ADA improvements that do not damage, cover or remove character-defining architectural features or finishes**
  - Installation or replacement of restroom fixtures, hand rails, tactile warning strips, automatic door openers, station identifier and wayfinding signage, etc.
- **Track upgrades within existing disturbed roadbed (e.g., replacement of or new turnouts, frogs, switches, crossovers)**

# EXAMPLES OF *PROPOSED* EXEMPT ACTIVITIES (CON'T)

- Maintenance of electrical/plumbing/communications systems and HVAC systems
- Interior maintenance work in stations that is limited to non-public spaces
- Painting and refinishing of surfaces with a like color or material



# EXAMPLES OF **PROPOSED** EXEMPT ACTIVITIES (CON'T)

- Rehabilitation and restoration of buildings and structures consistent with the applicable Secretary of Interior's standards
- Minor new construction compatible with the scale, size, and type of existing rail infrastructure, in previously disturbed ground
  - Equipment buildings
  - Safety/security fencing

# **WE NEED YOUR INPUT ON THE PROPOSED LIST OF EXEMPT ACTIVITIES**

**Based on your experience planning for and/or implementing rail projects, what would you recommend be included in the list of activities exempt from Section 106 review?**

# Theme #3

## Identification of Exclusions

# VALUE OF **OPTIONAL** EXCLUSION ID PROCESS

- **Variety and number of rail properties nationwide**
- **Many systems cross state boundaries**
- **Rail ROW often in private ownership**
- **Challenges of a “one size fits all” nationwide approach**
  - **Project Sponsors that wish to get additional use out of the exemption beyond the list of exempt activities may choose to implement the optional process to identify excluded properties.**

# **OPTIONAL**

## **EXCLUSION IDENTIFICATION PROCESS**

- **Led by an individual Project Sponsor**
- **Or, an opportunity for collaboration among multiple Project Sponsors**
  - **Those that operate over the same railroad or rail transit line, or that may be eligible to receive federal financial assistance for improvements to the same transportation infrastructure**
- **Project Sponsor would take lead on coordinating with FRA/FTA, ACHP, SHPOs, THPOs, and other interested stakeholders to:**
  - **Identify rail properties of national significance**
  - **Identify certain rail properties of particular state and local importance**

# **OPTIONAL**

## **EXCLUSION IDENTIFICATION PROCESS**

### **(CON'T)**

- **Final approval by FRA/FTA**
  - **List(s) posted on FRA or FRA website**
- **Process would allow for periodic additions to the list of excluded properties**
  - **Recognize passage of time**
  - **Acknowledges that rail ROW is predominately privately-owned, making surveys challenging or not possible**

# EXCLUDED PROPERTIES

- Excluded properties would remain subject to Section 106 review
  - *Except when undertakings involving such properties are strictly limited to exempt activities.*
- The effects of undertakings of any nature/scale on rail properties that are not on the FRA/FTA-approved excluded property list would be exempt from Section 106 review.

# WE NEED YOUR INPUT ON THIS PROCESS

**Is the distinction clear between *activity-based* and *property-based*?**

**What should FRA/FTA consider as we refine the proposed “two-pronged” approach?**



# NEXT STEPS

- Review the input received from the three sets of webinars held December 2016 and January 2017.
- Refine draft exemption based on your input
- FRA/FTA submit final draft to ACHP
- ACHP publishes draft exemption in the Federal Register for public review and comment
- FRA/FTA adjudicate comments

# NEXT STEPS (CON'T)

- **ACHP approves final exemption**
  - Immediate application for exempt activities
  - Project Sponsors decide whether to pursue optional process for identifying excluded properties
- **FRA/FTA develop FAQs, guidance and/or criteria for implementing the approved exemption**

# COMMENTS

In addition to your comments and questions submitted in advance of and during this webinar, FRA/FTA request that you provide any further input by December 23, 2016 to:

[FRA.106Exemption@dot.gov](mailto:FRA.106Exemption@dot.gov)

# WEBINAR SCHEDULE

- **SHPOs, Deputy SHPOs, and Staff (Completed)**
  - Tuesday, December 13<sup>th</sup>, 1:00 p.m. EST and 4:00 pm EST
- **Transportation Entities (Today)**
  - Tuesday, December 20<sup>th</sup>, 1:00 p.m. EST
- **THPOs, Tribes and NHOs (Upcoming)**
  - Wednesday, January 4<sup>th</sup>, 4:00 p.m. EST
  - Thursday, January 5<sup>th</sup>, 1:00 p.m. EST

# THANK YOU