



# Optional Property-Based Approach to Exempt Consideration of Effects to Rail Properties within Rail Rights-of-Way

**Presented by:**

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U.S. Department of Transportation

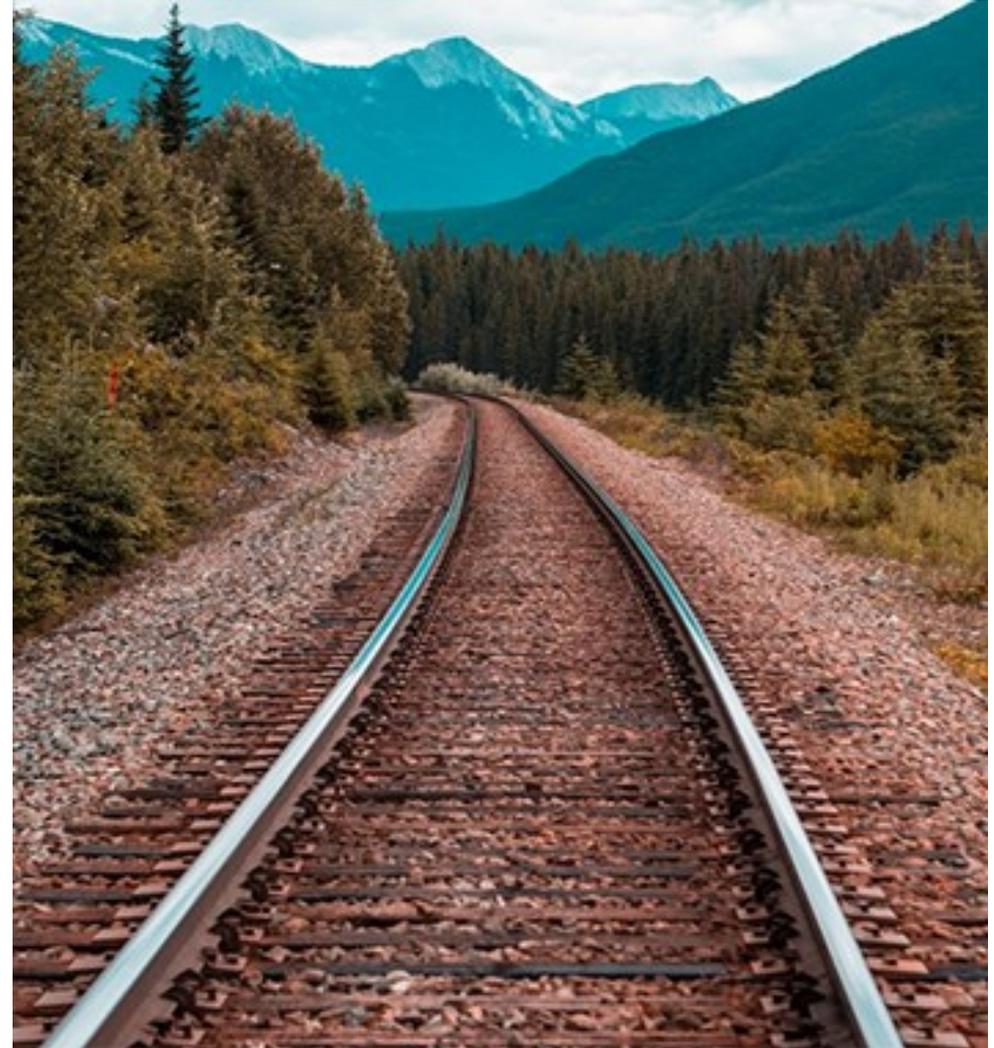
A dark blue background featuring silhouettes of several people sitting around a long table in a meeting room. The scene is dimly lit, with light coming from windows in the background, creating a professional and collaborative atmosphere. The silhouettes are dark against the lighter blue background of the room.

# POLLS 1 & 2



# Agenda

- Overview of Program Comment
  - History and intent
  - Two approaches
  - Key definitions
- Exempted Activities
- Property-Based Approach
  - Benefits
  - Review & approval process
    - Project sponsor & USDOT responsibilities
- Q&A



# Section 106 Rail ROW Program Comment

Streamlines compliance with Section 106 of the National Historic Preservation Act

- Required by Section 11504 of the Fixing America's Surface Transportation (FAST) Act
- Applicable to Federal undertakings located within rail ROW that are for the intended purpose of maintenance, improvements, and upgrades to transportation infrastructure
- Available for use by any Federal agency, including non-USDOT agencies, responsible for transportation-related undertakings located within rail ROW



ACHP: Advisory Council on Historic Preservation



# Today's Speakers



**Laura Shick**

*Supervisory Environmental  
Protection Specialist*  
**Federal Railroad Administration**



**Sharyn LaCombe**

*Federal Preservation Officer*  
**Federal Transit Administration**



# Two Approaches

## I. Activities-Based Approach:

- Appendix A – Exempted Activities List
- Focuses on activities with effects to historic rail properties that are foreseeable and minimal or not adverse
- Effective as of August 17, 2018

## II. Optional Property-Based Approach:

- Allows project sponsors to propose “excluded historic rail properties” within a defined study area of their choice
- USDOT operating administration (OA) designates “excluded historic rail properties” that remain subject to Section 106 review
- Effects to rail properties that were evaluated and not designated as “excluded historic rail properties” are exempt from Section 106 review for all future undertakings
- USDOT published implementing guidance on October 11, 2019



# Applicability of the Program Comment

Applies to activities that:

- Are Federal undertakings
- Affect rail properties
- Are for maintenance, repair, improvements, and upgrades
- Are located within:
  - Existing railroad and rail transit ROW (in part or in full)
  - Disturbed portions of the rail ROW



## Key Definition: Railroad & Rail Transit Rights-of-Way (Rail ROW)

- Land & infrastructure that have been developed for existing or former rail use
  - Irrespective of ownership
  - Regardless of whether or not it's in active use for rail operations
  - Includes ROW that was previously developed even if infrastructure has been modified or removed, or lacks evidence of prior use
- Typically identifiable by the presence of infrastructure that has a **demonstrable relationship** to the past or current function and operation of a railroad or rail transit system
- Does not include land that has never been developed for rail use



## The Program Comment Does Not Apply To

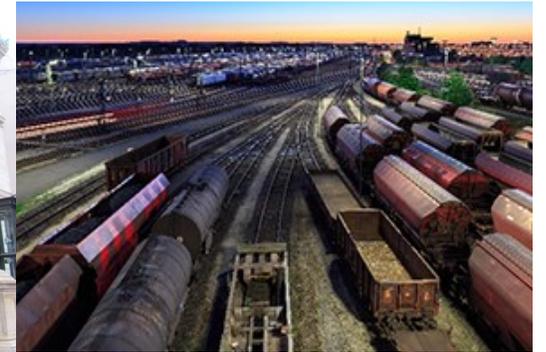
- Undertakings within undisturbed portions of rail ROW that may affect archaeological resources
- Historic properties located outside of rail ROW
- Non-rail properties located within rail ROW
- Historic properties of religious and cultural significance to Indian tribes or Native Hawaiian Organizations (NHOs)



# Examples of Rail Properties

**Demonstrable relationship** to the past or current function and operation of a railroad or rail transit system, including:

- Passenger stations and depots, including associated infrastructure and utilities
- Boarding platform shelters and canopies
- Parking lots and parking structures
- Boarding areas and platforms
- Landscaping and passenger walkways



# More Examples of Rail Properties

- Bridges, culverts, tunnels
- Signal and communication systems and towers
- Signage
- Overhead catenary systems
- Traction power substations
- Freight transfer facilities
- Retaining walls
- Ventilation structures
- Equipment maintenance and storage facilities
- Ancillary facilities



# More Examples of Rail Properties

Security & safety fencing



Rails and tracks, ties, ballast, rail beds, switches



Railyards & rail transit yards



# Rail Properties Do Not Include

Properties **without a demonstrable relationship to the function and operation of a railroad or rail transit system**, such as:

- Adjacent residential, commercial, or municipal buildings
- Property unrelated to existing or former railroads and rail transit lines that is proposed to be used for new rail infrastructure (i.e., greenfield construction)



# POLL 3



# Activities-Based Approach

## 95 total exempted activities; 13 categories

- Track and track bed
- Bridges and tunnels
- Railroad and rail transit buildings and boarding platforms
- Signals, communications, and power generation
- Roadway at-grade crossings and grade separations
- Safety and security
- Erosion control, rock slopes, and drainage
- Environmental abatement
- Operations
- Landscaping, access roads, and laydown areas
- Utilities
- Bicycle and pedestrian facilities, shared-use paths, and other trails
- Construction/installation of new railroad or rail transit infrastructure

### Section 106 Program Comment for Rail ROW Appendix A: Exempted Activities List

#### A. Track and Trackbed

1. Track and trackbed maintenance, repair, replacement, and upgrades within the existing footprint (*i.e.*, existing subgrade, subballast, ballast, and rails and crossties (track)). These activities must not include alterations to the trackbed that would result in a substantial visual change (*i.e.*, elevation or alignment) in the relationship between the trackbed and the surrounding landscape or built environment.
2. Reinstallation of double tracking on a currently single-tracked line that had historically been double-tracked.

#### B. Bridges and Tunnels

1. In-kind maintenance and repair of bridges and tunnels.
2. In-kind replacement of bridge hardware and mechanical and electrical components (*e.g.* brackets, rivets, bearings, motors).
3. Maintenance or repair of tunnel ventilation structures and associated equipment (*e.g.*, fans, ducting).
4. Replacement of tunnel ventilation structures that are not located within a previously identified historic district.
5. Replacement of tunnel ventilation structures that are located and publicly visible within a previously identified historic district, provided the replaced structures are substantially the same size as or smaller than the existing structures and are visually compatible with the surrounding built environment.
6. Maintenance, repair, or replacement of tunnel emergency egress hatchways.
7. Maintenance, installation, repair, or replacement of lighting, signal and communications systems, railings, and other safety- and security-related equipment or elements located within the interiors of tunnels.
8. Removal or replacement of any bridge or tunnel material or added-on element that is not part of the original construction.



## Appendix A: Exempted Activities

- Activities exempt from Section 106 review are limited to **maintenance, improvements, and upgrades to existing infrastructure**
- Limited allowances for new elements, additions, and minor new construction:
  - Installation of new fire and security alarms, HVAC, electrical systems, or mechanical equipment in non-publicly accessible areas of stations or depots
  - Improvements at existing at-grade crossings
  - Installation of safety and security fencing
  - Compatible construction in existing railyards
  - Construction of new stormwater management infrastructure in previously disturbed ground



## Appendix A: Exempted Activities

- Exempted activities do not cover substantial new construction projects such as a new station or railyard; major alterations or additions to existing facilities; or demolition of existing buildings, bridges, or other structures.

**The optional property-based approach was developed to provide a broader exemption for projects not covered by the activities-based approach, including demolition or substantial alteration of buildings and structures.**



# Optional Property-Based Approach

- Implementing guidance\* published by USDOT on October 11, 2019:
  - Provides information and examples for evaluating rail properties for designation as excluded historic rail properties
  - Describes the process for a Project Sponsor to propose excluded historic rail properties
  - Establishes timeframes for USDOT OA review of proposals
  - Establishes public involvement methods

\*<https://www.transportation.gov/office-policy/transportation-policy/final-guidance-implementing-optional-property-based-approach>



# Benefits of the Property-Based Approach

- Most beneficial for Project Sponsors who frequently carry out federally-assisted projects in the same portion of rail ROW
- Can focus on specific property type(s), e.g., stations, bridges, culverts
- Expedites Section 106 reviews for future undertakings by conducting the identification step one time “up front”
- Exempted activities list can still be applied to “excluded historic rail properties”
- Section 106 review not necessary regarding effects of future undertakings to rail properties that were evaluated under the property-based approach and not designated as “excluded historic rail properties”
- Allows Project Sponsors, Federal agencies, State Historic Preservation Officers (SHPOs), and consulting parties to focus their resources and efforts on minimizing or mitigating adverse effects of future undertakings to historically important rail properties



## ***Key Definition: Excluded Historic Rail Properties***

Excluded historic rail properties **illustrate the history of the development of the nation's railroads or rail transit systems, *and***

1. Are at least 50 years old, possess national significance, and meet the National Register eligibility criteria; or
2. Are less than 50 years old, possess national significance, meet the National Register eligibility criteria, and are of exceptional importance; or
3. Were listed in the National Register, or determined eligible for the National Register by the Keeper and retain eligibility as determined by the USDOT OA; or
4. Are at least 50 years old and meet the National Register eligibility criteria at the state or local level of significance as determined by the USDOT OA.



# Historic Properties in a Typical Section 106 Process

## Legend

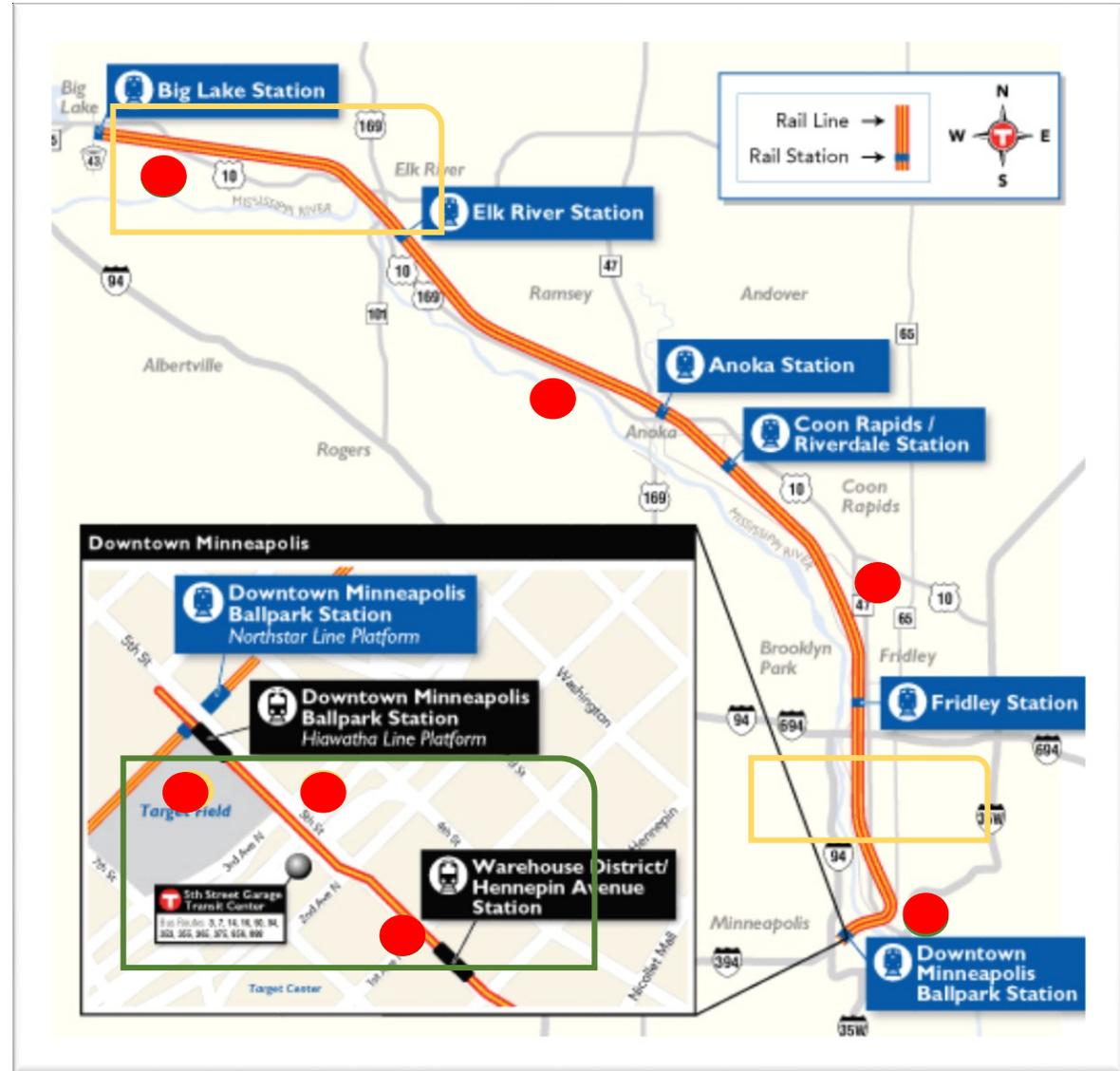
-  National Register Listed Property
-  NR-Listed District
-  National Register Eligible Property
-  NR-Eligible District



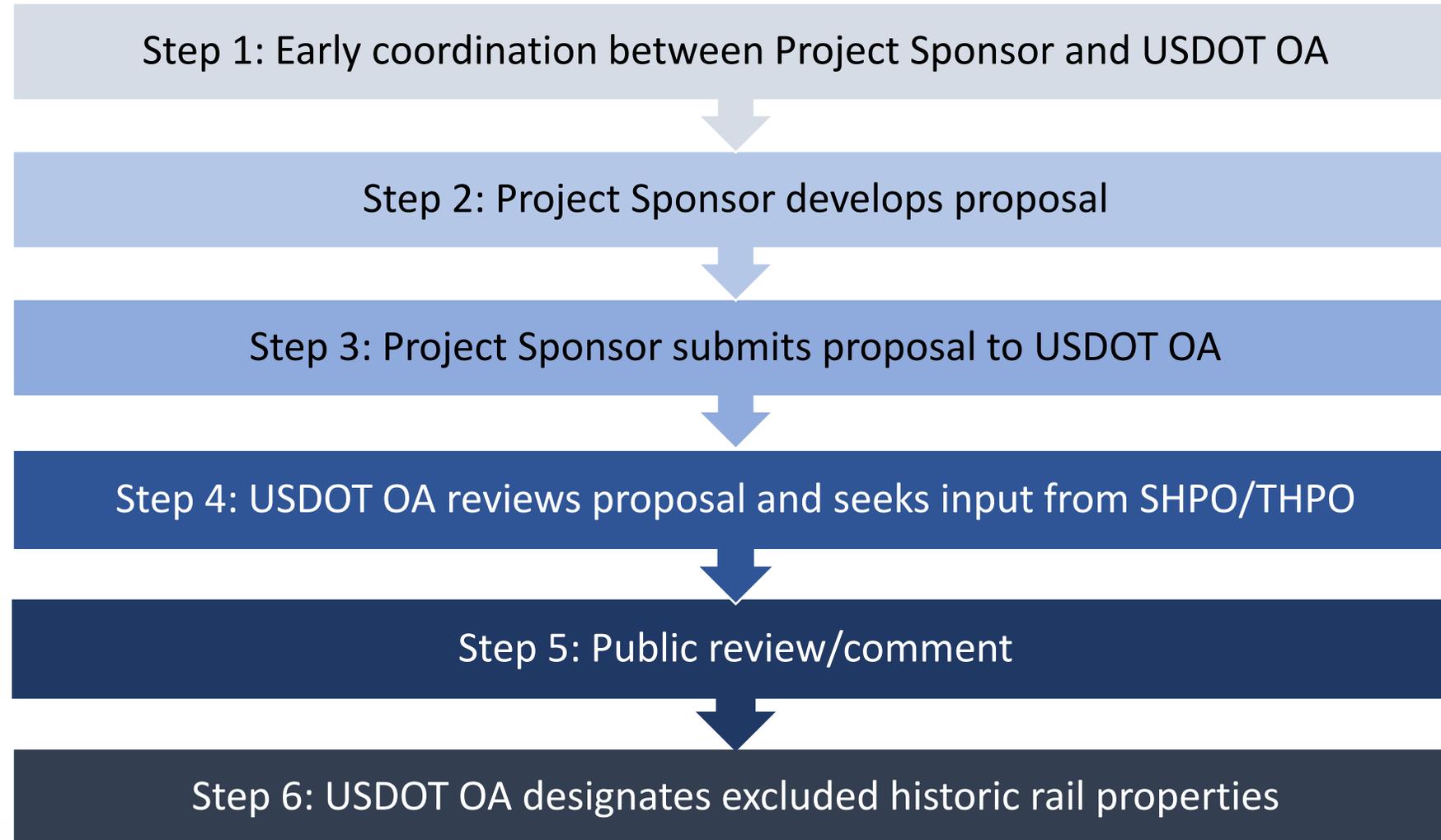
# Excluded Properties Remain Subject to Section 106

## Legend

- Excluded Historic Rail Property



# Property-Based Review & Approval Process



# Step 1: Early Coordination

## Project Sponsor Responsibilities

- Provide USDOT OA with:
  - Location and description of study area
  - Indicate which rail properties will be evaluated within study area (i.e., all rail properties or specific type(s))
  - Proposed methodology
  - Anticipated timeline
  - Maps and aerial photographs

## USDOT OA Responsibilities

- Respond to early coordination requests from Project Sponsors
- Provide technical assistance regarding the process and Implementing Guidance



## *Step 2: Project Sponsor Develops Proposal*

### Project Sponsor Responsibilities

- Define scope
- Conduct research and survey (as needed)
- Notify and request input from SHPOs/THPOs/Indian tribes/NHOs
- Evaluate rail properties per excluded historic rail property criteria (see Implementing Guidance)

### USDOT OA Responsibilities

- Provide technical assistance and answer questions



# Scope & Study Area

- Project Sponsor defines study area:
  - Location: defined by a geographical area such as a city, county, or state;
  - Rail line: defined by the name of the rail corridor, the railroad line, or rail transit system/line; or
  - Rail line segment: defined by specific location along a rail line, such as between mile posts.
- Evaluate all rail properties or specific property type(s)
  - Bridges, culverts, stations, maintenance or operations buildings, other



# Conduct Research

- Background research to identify and evaluate historic significance of rail properties, using:
  - Previous historic property evaluations
  - Information on railroad and rail transit-related history (e.g., scholarly publications, enthusiast websites, company records)
  - Knowledgeable persons
  - Historical maps, photos, aerial views, engineering plans/drawings
- Physical survey, if needed
  - Reconnaissance-level survey or intensive-level survey
  - Consult with USDOT OA and refer to SHPO's state-specific survey guidance
  - Must be conducted under the direction of a Secretary of the Interior (SOI)-qualified professional



## *Coordination with SHPOs, THPOs, Indian Tribes, and/or NHOs*

- Project Sponsor must notify and request input from the appropriate SHPO, THPO, Indian tribe(s), and/or NHO(s)
- Early coordination to promote information sharing
- Notification should include:
  - A description of the study area;
  - A map illustrating the study area;
  - The specific type(s) of rail properties to be evaluated;
  - A description of the proposed methodology;
  - The USDOT OA(s) to which the proposal will be submitted.



# *Evaluate Rail Properties*

Evaluate rail properties to determine if they:

1. Illustrate the history of the development of the nation's railroads or rail transit systems, and
2. Meet one of the four criteria listed on slide #20



# Evaluate Rail Properties

- Evaluations should follow standard, professionally-accepted practices used in the historic preservation discipline.
- Apply the following concepts to determine if a rail property should be designated as an “excluded historic rail property”:
  - Historic context
  - Significance
  - National Register criteria
  - Integrity



# Evaluate Rail Properties

- **Historic Context:** Framework for evaluating a resource as a product of its time, location, and/or heritage
- **Significance:** Often requires consideration of development patterns and historic properties beyond the geographical boundaries of the study area and/or rail ROW
  - Areas of Significance:
    - Architecture
    - Engineering
    - Transportation
    - Social movements
    - Others



Pennsylvania Railroad, Rockville Bridge, Spanning Susquehanna River



# Evaluate Rail Properties

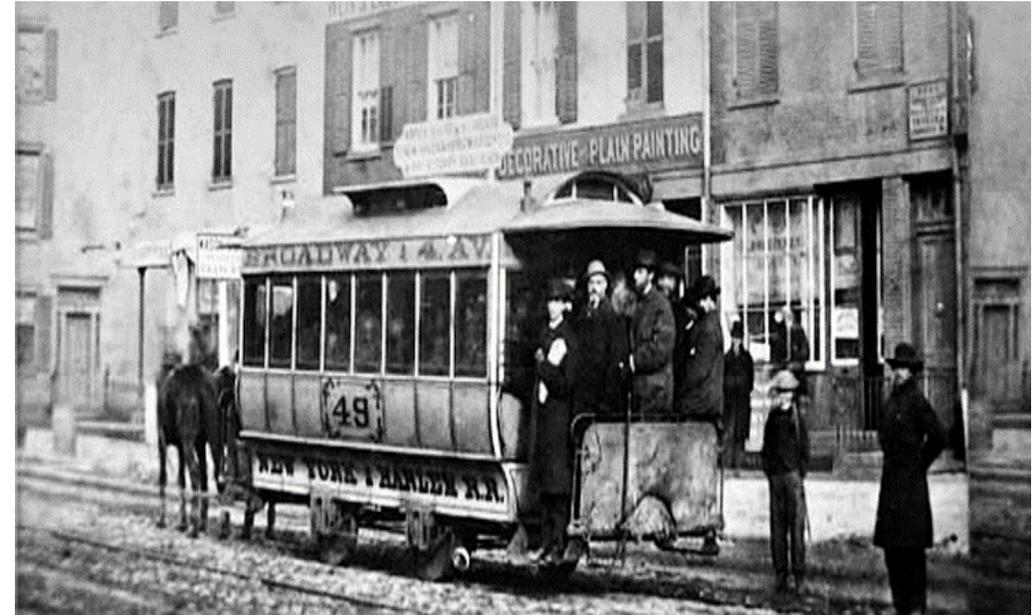
- **National Register criteria**
  - Criterion A: Events
  - Criterion B: Persons
  - Criterion C: Design/Construction
  - (Criterion D: Information Potential)
- **Integrity:** Property retains the physical features and associations that relate to its significance



# History of Development of Nation's Railroads & Rail Transit Systems

**Primary Criterion:** Property illustrates and contributes to an understanding of the history of the development of the nation's railroads or rail transit systems

- Resources:
  - FRA's 2013 report to Congress
  - FTA's *Historic Context Report for the Transit Rail System Development*
  - Railroad historic context studies
  - Multiple Property Documentation Forms



# National Significance

- Illustrate the history of the development of the nation's railroads or rail transit systems
- Are at least 50 years old
- Meet NR-eligibility criteria; and
- Possess a national level of significance through one of the following:
  - Designated a National Historic Landmark or a Historic Civil Engineering Landmark;
  - Identified as nationally significant in its NR listing or nomination, and supported by the Project Sponsor's background research and confirmed by the USDOT OA; or
  - Determined by the USDOT OA, based on information provided by a Project Sponsor, to have significance at the national level



**Pennsylvania Railroad Depot and Baggage Room,  
Dennison, OH**



**St. Charles Streetcar Line, New Orleans, LA**



# *Exceptional Importance*

- Illustrate the history of the development of the nation's railroads or rail transit systems;
- Are less than 50 years old;
- Meet NR-eligibility criteria;
- Possesses a national level of significance; and
- Exhibits exceptional importance (Criteria Consideration G)



**World Trade Center Transportation Hub, New York, NY**



## *Listed in National Register or Determined Eligible by Keeper*

- Illustrate the history of the development of the nation's railroads or rail transit systems;
- Listed in the NR or determined eligible for the NR by the Keeper prior to the effective date of the Program Comment (August 17, 2018); and
- Retain NR-eligibility, as determined by the USDOT OA



**Hoosac Tunnel, North Adams, MA**



## State or Local Significance

- Illustrate the history of the development of the nation's railroads or rail transit systems;
- At least 50 years old;
- Meet NR-eligibility criteria; and
- Demonstrate state or local level of significance, as determined by the USDOT OA



**Bangor and Aroostook Railroad, Derby Shops, Milo, ME**



## Step 3: Project Sponsor Submits Proposal to USDOT OA

### Project Sponsor Responsibilities

- Ensure proposal includes:
  - Description of study area
  - Scope of evaluated properties
  - Evaluation methodology
  - Detailed list of resources and persons consulted
  - Survey information
  - Description of all evaluated rail properties
  - Proposed list of excluded historic rail properties with justification

### USDOT OA Responsibilities

N/A



## Step 4: USDOT OA Review

### Project Sponsor Responsibilities

- Coordinate with USDOT OA to modify proposal per stakeholder comments, if needed

### USDOT OA Responsibilities

- Review proposal for adequacy
  - Provide feedback to Project Sponsor
- Notify & request input from appropriate SHPOs, THPOs, Indian tribes, and/or NHOs
- Coordinate with Project Sponsor to modify proposal per stakeholder comments, if needed



# Step 5: Public Review/Comment

## Project Sponsor Responsibilities

- Coordinate with USDOT OA to modify proposal per stakeholder and public comments, if needed

## USDOT OA Responsibilities

- Make proposal available for public review and comment (no more than 30 days)
- Provide full submission to appropriate SHPOs, THPOs, Indian tribes, and/or NHOs
- Coordinate with Project Sponsor to modify proposal per stakeholder and public comments, if needed
  - May seek input from ACHP and/or Keeper



## Step 6: USDOT Designates Excluded Historic Rail Properties

### Project Sponsor Responsibilities

N/A

### USDOT OA Responsibilities

- Designate excluded historic rail properties
- Notify transportation and historic preservation stakeholders
- Publish USDOT OA-designated excluded historic rail properties on USDOT website (*in development*)



# Use of USDOT OA-Designated Excluded Historic Rail Properties in Future Undertakings

- Can be used by any USDOT OA or other federal agency (including those outside of USDOT)
- Section 106 review **is still required for future undertakings affecting excluded historic rail properties**
  - The effects of future undertakings on rail properties that were evaluated under the property-based approach and not designated as excluded historic rail properties are **exempt from Section 106 review**
- *Appendix A: Exempted Activities List* can be applied to all rail properties regardless of historic status, including excluded historic rail properties
- Section 4(f) exceptions in the recently updated FHWA/FTA/FRA regulations (23 CFR 774.13) may apply – check with USDOT OAs



# *USDOT Website (in development)*

- Repository for Project Sponsor submissions
- Map of study areas
- List of USDOT OA-designated excluded historic rail properties



# POLL 4





# QUESTIONS & MORE INFORMATION

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

FRA Website: <https://railroads.dot.gov/rail-network-development/environment/final-section-106-program-comment-rail-rights-way>

FTA Website: <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/rail-row-program-comment-program-comment-exempt>



# POLL 5

