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MEMORANDUM

TO: Ellen Jones, President, D.C. Surface Transit, Inc.

FROM: Andrea C. Ferster

DATE: December 10, 2009

SUBJECT: The nature of legislative restrictions on the use of streetcars with overhead wires in the District of Columbia

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This report provides an analysis of the laws applicable to the plans by the D.C. Department of Transportation ("DDOT") to construct a network of streetcars powered by overhead catenary wires in the District of Columbia.

Background

In 1889, the U.S. Congress passed a law authorizing the conversion of horse-drawn streetcars to "electric power by storage or independent electrical batteries or underground wire, or underground cables moved by steam power." Fiftieth Congress, Sess. II, 793, 797 (1889). Ultimately, D.C. developed a streetcar network that peaked at over 200 miles. Streetcar service was discontinued in1962, when streetcars were abandoned in favor of buses.

In 2003, the D.C. Department of Transportation ("DDOT") began to study the possibility of addressing current gaps in transit service in the District of Columbia. The resulting report identified the re-introduction of streetcar service as part of the recommended system plan. This plan envisions a network with 37 miles of streetcar tracks consisting of eight street car lines, to be constructed in three phases. Phase 1 consists of lines in Anacostia, Benning Road, and H Street, N.E.

In 2007, the National Capital Planning Commission ("NCPC") approved the Anacostia Line segment. However, the accompanying Executive Director's report noted the ban on

overhead wires in the 1889 statute, and made clear that approval of this segment should not be construed as the "Commission's acceptance of a future streetcar system that uses an overhead contact system within the L'Enfant City and Georgetown." NCPC Executive Director's Report, at 2 (Jan. 25, 2007). The NCPC further asserted that the use of streetcars with overhead wires and infrastructure necessary for such wires would "contradict mutually shared planning guidance to protect right-of-way viewsheds within the L'Enfant City that are also stated in the Federal and District elements of the Comprehensive Plan. Additionally, the L'Enfant Plan rights-of-way have protection through listing in the District of Columbia Inventory of Historic Sites and in the National Register of Historic Places" *Id.* at 7-8.

In general, Streetcar service is divided into eight corridors, which would be constructed in phases. While the corridors have been named based on the major streets that exist within the corridor, specific alignments to accommodate the streetcar route have not yet been determined. Identification of specific street alignments for streetcars will require the completion of more detailed design and environmental studies. A general description of the streetcar corridors is as follows.

- **MLK Jr. Ave/M St SE** – This corridor extends from South Capitol St along M Street SE serving Nationals Park Ballpark and surrounding development. Streetcar service then extends across the 11th Street Bridge and south along Martin Luther King Avenue SE to Alabama Avenue SE, serving the future Homeland Security Headquarters development planned for the former St. Elizabeth's Hospital Campus.

- **K St/H St/Benning Rd** – This corridor includes streetcar service along Benning Rd NE from the Benning Road Metrorail Station to H Street NE, along H Street NE/NW from Benning Road to New Jersey Avenue NW, a short portion of New Jersey Avenue NW between H Street NW and M K Street NW, and K Street NW from New Jersey Avenue to a point west of Wisconsin Avenue NW.

- **Georgia Ave/14th St/7th St** – This corridor extends from the Buzzards Point area and along M St SW and Maine Avenue SW to 7th Street SW. The corridor turns to the north and extends along 7th St SW from Maine Avenue SW to F St NW and then turns west along F Street SW. The corridor turns northward on 14th St NW to U St NW and eastward along U Street to Georgia Avenue. Service turns north on Georgia Avenue and then east generally along Butternut Street to the Takoma Metrorail Station.

- **8th St/MLK Jr. Ave/K St/H St** – This corridor extends streetcar service from Alabama Avenue SE to the Anacostia Metrorail Station generally along Martin Luther King Avenue SE and across the 11th Street Bridge to M Street SE and then a north-south connection to H Street NE that in the vicinity of 8th Street SE/NE . The line continues west along H St NE to New Jersey Avenue NW, a short portion of New Jersey Avenue NW between H Street NW and K Street NW, and along K Street NW to Washington Circle.

- **Rhode Island Ave/U St/14th St/K St** – This corridor includes streetcar service along Rhode Island Avenue NE/NW from Eastern Avenue to Florida Avenue NW. The corridor continues westward along Florida Ave NW and U St to 14th Street NW. Streetcar service then extends south along 14th St NW and westward.

In 2009, DDOT began laying tracks for the Anacostia and H Street/Benning Road lines. The modern streetcars that will be used will be eight feet wide, 66 feet long, and are capable of operating in mixed traffic. The streetcars would be powered by overhead catenary wires. The question

presented here is whether Congress, by statute, has prohibited the use of streetcars powered by overhead catenary wires, and whether this prohibition constitutes a "local" rather than "national" law, which the District of Columbia has the authority to amend or repeal.

Discussion

I. Whether Overhead Wires Are Statutorily Prohibited.

In 1889, the U.S. Congress passed the following law:

> [A]ny company authorized by law to run cars propelled by horses within the District of Columbia is hereby authorized to substitute for horse *electric power by storage or independent electrical batteries or underground wire, or underground cables moved by steam power*, on the whole or any portion of its roadway, with authority to purchase and use any terminal ground and facilities necessary for the purpose; and any such street railway company electing to substitute such power on any part of its tracks or road-beds on the streets of the District of Columbia shall, before doing so, cause such parts of its road-beds to be laid with a flat grooved rail and made level with the services of the streets upon each side of said tracks or road-beds, so that no obstruction shall be presented to vehicles passing over said tracks.

Fiftieth Congress, Sess. II, 793, 797 (1889) (emphasis added). This statute further provides that,

> after the passage of this act no other rail than that herein mentioned shall be laid by any street railway company in the streets of Washington and Georgetown, and . . . Provided further, That the foregoing requirements *as to motive power*, rails and road-bed shall not apply to street railroads outside of the city of Georgetown and the Boundary limits of the city of Washington. . . .

Id. (emphasis added).

The 1889 statute, on its face, appears to specifically exempt the limitations "as to motive power" from areas outside of the "City of Washington" and the "City of Georgetown." According to Webster's Dictionary, "motive power" is defined as a "power used to move or impel, esp. some form of mechanical energy (steam, electricity etc.) used to drive machinery." The New Lexicon Webster's Dictionary of the English Language, Encyclopedic Edition (Lexicon Publications, Inc., 1988 Ed.). Accordingly, the negative inference of this provision is that Congress specifically intended only to permit street cars to operate in the District of Columbia using the "motive power" specified in the statute, *i.e.*, "electric power by storage or independent electrical batteries or underground wire, or underground cables moved by steam power." The specified forms of motive power do not include "overhead wires." Therefore, the plain language of the statute appears to prohibit D.C. from constructing streetcars using any other "motive power" within the City of Washington and the City of Georgetown. *See The Original Honey Baked Ham Co. v. Glickman.* 172 F.3d 885, 887(D.C. Cir. 1999) ("A statute listing the things it does cover exempts, by omission, the things it does not list. As to the items omitted, it is a mistake to say that Congress has been silent. Congress has spoken — these matters are outside

the scope of the statute.")[1]

The requirements concerning motive power in the 1889 statute applied only to the "City of Washington" and the "City of Georgetown," as those geographic areas existed prior to 1889.[2] I have not located a codification of any federal law setting forth the limits of the "City of Washington" at that time, although the D.C. Code suggests that Act of Congress was passed "on the 21st day of February, 1871" pertaining to the boundaries of the "City of Washington." *See* D.C. Code § 1-107. However, maps used by the NCPC and the District of Columbia indicate the boundaries of the "Old City of Washington" are roughly, Rock Creek Park, north to Florida Avenue, NW; Florida Avenue, NW east to 15th Street, NE; 15th Street, NE south to C Street, SE; and C Street SE west to 22nd Street, NW. The boundaries of the City of Georgetown are apparently set forth in "the Acts of February 11, 1895, 16 Stat 419, ch. 62, and June 20, 1874, 18 Stat. 116 ch. 337." *See* D.C. Code Ann. § 1-107.

Subsequent congressional legislation appears to confirm the interpretation of the 1888 statute as barring overhead wires within these designated areas. In 1892, Congress passed an "Act to Incorporate the Washington and Great Falls Railway Company," which authorized the construction of an "electric railway" along Canal Road through the lands of the Washington Aqueduct and to Chain Bridge (*i.e.*, outside of the limits of the City of Washington and Georgetown), which specifically authorizes the use of "such poles *and aerial wires* as may be necessary for such power." 27 Stat. 326 (July 29, 1892) (emphasis added). In 1895, Congress passed an act to amend an Act to amend the "Act to Incorporate the Maryland and Washington Railway Company," authorizing the construction of a railway extension along Rhode Island Avenue to North Capitol Street to F Street by the Maryland and Washington Railway Company *(i.e.*, within the limits of the City of Washington), which legislation specifically provides that "nothing in this act shall authorize the erection of overhead wires within the limits of the City of Washington. 28 Stat. 713 (March 2, 1895).

There is another federal statute, passed in 1888, pertaining generally to the use of overhead wires. This 1888 statute, unlike the 1889 streetcar statute, is codified in the D.C. Code, and provides that

> The Mayor of the District of Columbia shall not permit or authorize any additional telegraph, telephone, electric lighting *or other wires* to be erected or maintained on or over any of the streets or avenues of the City of Washington; provided, that the Mayor of the District may, under such reasonable conditions as he may prescribe, authorize the wires of any electric light company existing on July 18, 1888, and. . .

D.C. Code Ann. § 34-1901.01 (emphasis added). Overhead catenary wires for streetcars would

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[1] It does not appear that anyone has undertaken to research the legislative history of this 1889 statute. Nonetheless, where a statute is clear on its face, resort to legislative history is unnecessary. *Public Citizen v. Carlin*, 184 F.3d 900, 904 (D.C. Cir. 1999) ("Legislative history may show the meaning of the texts — may show, indeed, that a text 'plain' at first reading has a strikingly different meaning — but may not be used to show an 'intent' at variance with the meaning of the text.")

[2] In 1895, the "City of Georgetown" was abolished as a separate and independent city. *See* D.C. Code § 1-107.

appear to be "other wires," and therefore, would appear to fall within this general ban.

Finally, in 1934, Congress passed a law that specifically exempted "steam railroad companies now operating with the District of Columbia" from the ban on overhead wires. Public Law 73-137, 73rd Cong. 2d Sess, Ch. 97, § 1, 48 Stat. 506 (March 27, 1934). This statute, which is partially codified in the D.C. Code, provides as follows:

> [s]team railroad companies now operating within the District of Columbia are hereby authorized, . . . to electrify their lines within the District of Columbia and across the Anacostia and Potomac Rivers *with an alternating current overhead catenary or other type of electrification system*, with all necessary transmission, signal, and communication conducts and equipment, poles, conduits, underground and *overhead construction*, substations, and any other structures necessary in such electrification, *the provisions of any law or laws to the contrary notwithstanding*."

D.C. Code Ann. § 9-1207.01 (emphasis added). This 1934 statute, which authorizes the use of overhead catenary wires by steam railroads "the provisions of any law or laws to the contrary notwithstanding" is likely to be construed as recognition that the 1888 and 1889 statutes constitute a general ban on overhead wires, requiring a specific statutory exemption to allow steam railroads to operate using overhead catenary wires.

This 1934 statute is also likely to be construed as a specific exemption from the ban on overhead wires applicable to steam railroads rather than a full repeal of the 1888 and 1889 bans. It is a "cardinal rule" that repeals by implication are disfavored. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 189 (1978) (quoting *Morton v. Mancari*, 417 U.S. 535, 549 (1974)). Moreover, the exemption is likely to be given a limited construction as exempting only "steam railroads" from the 1889 ban, and not streetcars, which at that time were powered by electricity. *See D.C. Federation of Civic Associations v. Volpe*, 434 F.2d 436, 445 (D.C. Cir. 1970) (holding that a statute that purported to exempt highway project from "pre-construction" planning requirements "notwithstanding any other provision of law" must be given a narrow construction, and did not exempt the project from other planning requirements, stating that . *A statute would have to be much more specific if it is to eliminate certain, but not all, . . . procedures*.").[3]

Accordingly, it appears that there is an extant statutory prohibition on the operation of streetcars using overhead catenary wires.

II. Whether the District of Columbia Has the Authority To Amend The 1888 and 1889 Federal Laws.

Since the 1888 and 1889 statutes appear to provide a clear ban on streetcars powered by overhead wires, these statutes must be amended or repealed in order to use this form of motive power for streetcars. The question here is whether the District of Columbia has the authority under the Home Rule Act to amend or repeal these statutes, or whether these federal laws implicate "property or functions of the United States," so that D.C. lacks authority to change

[3] Additional legislative history research, however, on this 1934 statute might be helpful.

these statutes under D.C. Code Ann. § 1-206.02(a)(3).

A. D.C. Has the Authority Under the Home Rule Act to Amend or Repeal the 1889 Statute Barring Streetcars With Overhead Wires in Certain Geographic Areas.

1. Statutory Limitations on D.C. Legislative Authority.

The U.S. Constitution grants Congress plenary authority over the District of Columbia. Art. I, § 8, cl. 17. Prior to the passage of the Home Rule Act, Congress effectively acted as the local legislative body for the District of Columbia, and enacted numerous laws governing the affairs of the District of Columbia. However, in 1973 Congress passed the Home Rule Act to "relieve Congress of the burden of legislating upon essentially local District matters." D.C. Code Ann. § 1-201.02(a). Under the Home Rule Act, Congress delegated to the D.C. Council "legislative power," which "shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of (the) Act." *Id.* § 1-203.02.

The Home Rule Act establishes specific exceptions to this legislative authority, including a prohibition on enacting a "commuter tax," a ban on enacting any law relating to the organization of the D.C. Courts, relating to the courts of the United States, the U.S. Attorney, or the U.S. Marshall Service, or to the Commission on Mental Health. *Id.* § 1-206.02(a). Of particular note, one of the specific prohibitions relate to D.C.'s appearance, scale, and streetscape: D.C. is not permitted to legislate in a manner that would contravene the 1910 Height of Buildings Act (D.C. Code Ann. § 6-601.05). *Id.* § 1-206.02(a)(6).

There is no specific prohibition in the Home Rule Act that bars the District of Columbia from legislating on the specific subject of streetcars and/or overhead wires. However, there is a general prohibition in Section 602(a)(3) of the Home Rule Act, providing that the District of Columbia has no authority to "(3) [e]nact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively to the District." D.C. Code § 1-206.02(a)(3).

In interpreting Section 602(a)(3) of the Home Rule Act, the Courts have held that the District of Columbia has the authority to amend or repeal congressional statutes that are "local" rather than "national" laws. *District of Columbia v. Greater Washington Central Labor Council, AFL-CIO,* 442 A.2d 110, 113 (D.C.1982), *cert. denied,* 460 U.S. 1016 (1983) (holding that the D.C. Council had the authority to repeal a federal statute extending federal workers compensation laws to private employers in the District of Columbia); *Hall v. C & P Telephone Co.*, 793 F.2d 1354, 1373 (D.C. Cir. 1986) (holding that the D.C. Court of Appeals' construction of this congressional statute as being a "local law that did not affect federal functions" must be given deference by the federal court).

Several cases have addressed the question of whether statutes enacted by Congress in legislating on behalf of D.C. prior to the passage of the Home Rule Act affect the "functions or property of the United States." In particular, in *District of Columbia v. Greater Washington*

Central Labor Council, AFL-CIO, 442 A.2d 110 (D.C. 1982), the Court held that the D.C. Council had the authority under the Home Rule Act to repeal a federal law regulating workers compensation for private sector employees in the District of Columbia, which was passed by Congress prior to the passage of the Home Rule Act. The union challenged the D.C. law, arguing that workman's compensation in the District was a federal matter, and that the new law affected a "function of the United States," and was invalid. The court rejected this argument, finding that Section 603(a)(3) of the Home Rule Act was included to "safeguard the operations of the federal government on the national level." *Id.* at 116. The court quoted the following language from the legislative history of the Home Rule Act:

> The functions reserved to the federal level would be those related to federal operations in the District, and to property held and used by the federal government for conduct of its administrative, judicial, and legislative operations; and for the monuments pertaining to the nation's past.

Greater Washington Central Labor Council, 442 A.2d at 116 *(citing* House Comm. on The District of Columbia, 93d Cong., 2d Sess., D.C. Executive Branch Proposal for Home Rule Organic Act 182 (Comm. Print 1973).

Accordingly, the question of whether D.C. has the authority to repeal or amend the 1888 federal law barring streetcars using overhead wires as their "motive power" in the limits of the City of Washington and Georgetown turns on whether the statute concerns "federal operations in the District," or "property held and used by the federal government for conduct of its administrative, judicial, and legislative operations," or "the monuments pertaining to the nation's past." *Id.* [4]

2. The District of Columbia is Not Prohibited from Enacting Legislation Repealing the Ban on the Use of Overhead Wires to Power Streetcars.

The question here is whether the ban on streetcars powered by overhead wires affects "the functions or property of the United States." D.C. Code Ann. § 1-206.02(a)(3). Despite a heightened federal interest in some of the geographic areas through which the new street car program will operate, it does not appear that the 1888 ban on overhead wires affects "functions or property of the United States."

While the United States holds title to the streets of Washington, the Mayor of D.C. has "the care and charge of, and the exclusive jurisdiction over, all the public roads and bridges, except such as belong to and are under the care of the United States." D.C. Code § 9-101.02.[5]

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[4] In this case, since the relevant congressional statute applies exclusively within the District of Columbia, the repeal of this law is "restricted in its application exclusively to the District." D.C. Code § 1-206.02(a)(3). *See. e.g. Brizill v. D.C. Board of Elections and Ethics*, 911 A.2d 1212, 1215-16 (D.C. 2002) (D.C. lacked the authority to enact a law that was inconsistent with a congressional statute that applied to the District of Columbia and to "Indian country" and "possessions" and territories of the United States).

5 For example, the National Park Service must give D.C. permission to widen roads through or adjacent to federal parkland. *See* D.C. Code § 10-123.

Thus, one court held that the streets of Washington -- even streets within the boundaries of the old "City of Washington" – do not constitute property held and used by the federal government for conduct of its administrative, judicial, and legislative operations." *See Techworld Development Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 113 (D.D.C. 1986), *judgment vacated*, 1987 WL 1367570 (C.A.D.C. 1987)(holding that the closing of 8th Street N.W. "is precisely the sort of local matter Congress wishes the D.C. Council to manage," notwithstanding the fact that "title to the street was vested in the United States.").[6]

In 1995, the U.S. Department of Justice's Office of Legal Counsel ("OLC") issued a legal opinion distinguishing the *Techworld* case from the closing of Pennsylvania Avenue in front of the White House by the U.S Secret Service States as a security measure following the Oklahoma City bombing. The OLC opinion held that the Secret Service had the authority to close Pennsylvania Avenue, reasoning that the street closing implicated "the indisputably federal function of protecting the President." OLC Opinion re Authority of the Secretary of the Treasury to Order the Closing of Certain Streets Located Along the Perimeter of the White House, at 7.(May 12, 1995) (hereinafter "May 12, 1995 OLC Opinion"). The opinion also noted that the streets slated for closing were located within the National Capital Service Area, "a geographic area comprising many of our national governmental buildings and monuments, the White House, the National Mall and other areas, over which Congress in the Home Rule Act reserved some federal administrative authority," and that "Congress considered the federal government's interest in areas within the National Capital Service Area to be greater and more important than its interest in areas outside the National Capital Service Area." *Id.*

Here, in addition to traversing areas within the larger limits of the old "City of Washington," D.C.'s proposed streetcar system will traverse areas that are within the National Capitol Service Area. *See* D.C. Code Ann. § 1-207.39, defining the boundaries of the National Capital Service Area). However, while the May 12, 1995 OLC Opinion views this geographic area as one in which the federal interest is "greater" than other geographic areas, the reasoning of the opinion primarily rests on the "federal function" of protecting the President, which is codified in several federal statutes. While the OLC opinion also makes reference to "federal interests" in the National Capital Service Area, the opinion acknowledges (using the double negative) that "the language and legislative history of the provision do not suggest that the District of Columbia has no jurisdiction over the National Capital Service Area." May 12, 1995 OLC Opinion, at 7. Indeed, the ultimate holding of the OLC is that federal statutes give the Secret Service the authority to close virtually any street where necessary to protect the President, within or outside of the District of Columbia. The heightened federal interest in the National Capital Service Area was therefore *dicta* and did not control the outcome of the OLC's analysis.

Moreover, while Congress also defined the National Capital Service Area in the Home Rule Act, it did so solely for the purpose of facilitating joint management of services and administrative functions between the federal and local government, and not to carve our areas of exclusive geographic jurisdiction where D.C. authority is barred. *See Intel Corp. v. District of*

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6 While the *Techworld* decision was vacated by the U.S. Court of Appeals for the D.C. Circuit, even after vacatur, a district court opinion will still be available and can still be citable for its persuasive weight. *NASD Dispute Resolution v. Judicial Council*, 488 F.3d 1065, 1069 (9th Cir. 2007).

Columbia, 448 A.2d 161, 267 (D.C.), *cert. denied,* 459 U.S. 1087 (1982) (holding that D.C. had the authority to tax personal property within the National Capital Service Area). Any suggestion in the May 12, 1995 OLC Opinion that the District of Columbia was prohibited from enacting legislation that affects this geographic area is *dicta* since that D.C. conducts numerous administrative functions –public transit services, regulation of street vendors, sanitation services, etc. – within this geographic area without intruding on "functions or property of the United States." Since D.C. already operates an extensive network of public transportation services within the National Capital Service Area, the operation of streetcars using overhead wires within this area would not intrude on the ability of any federal agency to exercise a statutory function.

The NCPC has noted that it views the protection of viewsheds within this area as a federal "interest." However, the fact that the federal government may have a greater "interest" in the National Capitol Service Area does not mean that the District is therefore barred from enacting legislation that affects this geographic area. To the contrary, federal law establishes a separate mechanism for the NCPC to protect these federal interests, such as by commenting on planning and development in the District of Columbia. *See, e.g.,* 40 U.S.C. § 8721(a)(1). In the case of proposed "District developments and projects," the NCPC provides a "report and recommendations" to the agency; "[a]fter consultation and suitable consideration of the views of the Commission, the agency may proceed to take action in accordance with its legal responsibilities and authority." *Id.* § 8722(b).[7]

Indeed, the ban on streetcars with overhead wires in the 1889 statute extends to the City of Georgetown, an area that would be outside of the area that the OLC views as an area of heightened federal interest. Under the OLC's view, D.C. could therefore repeal the ban on overhead wires in Georgetown, but not in the "City of Washington." This would make little sense in terms of discerning whether Congress viewed the 1889 streetcar statute as a federal versus local matter, since Congress in 1889 did not differentiate between these geographic areas: both areas were equally important to warrant a Congressional ban on overhead wires. And yet, there is no comparable authority for identifying a heightened federal interest in Georgetown as a specific geographic area in which the United States has an interest.

Accordingly, the question of whether a federal statute applicable exclusively to the District of Columbia nonetheless implicates the "powers or functions of the United States" does not turn on whether there is a "federal interest" in the geographic area where the legislation applies. Instead, the question of whether a statute implicates "properties or functions of the United States" requires an examination of the specific federal interest or function that might be affected by the

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[7] In addition to the NCPC's role in commenting on proposed federal and district development and projects, the NCPC must approve "the location, height, bulk, number of stories, and size of federal public buildings in the District of Columbia and the provision for open space in any around the same" 40 U.S.C. § 8722(d). The NCPC also has the authority to disapprove "public buildings erected by any agency of the Government of the District of Columbia in the central area of the District (as defined by concurrent action of the Commission and the Council of the District of Columbia) . . .." *Id.* § 8722(e). Accordingly to Black's Law Dictionary, a "building" is "[o]rdinarily , a structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof." A streetcar system does not fall within this definition. NCPC also has the authority to approve maps for the permanent highway plan for the District of Columbia. D.C. Code § 9-103.02. This permanent highway plan relates to "the extension of a permanent system of highways over all that portion of said district not included within the limits of the Cities of Washington and Georgetown." *Id.* § 9-103.01.

exercise of local legislative authority. This reading of the Home Rule Act is likewise consistent with its legislative history, which notes that "the whole complicated matter of Federal functions versus local functions or Federal interests versus local interests, admittedly not easy to distinguish" was designed to inform the question of whether the legislation would impact "the conduct of Federal business." *See* D.C. Government Organization: Hearings on Self-Determination for the District of Columbia, Part 2, 93d Cong., 1st Sess. 52 (1973) (statement of John Nevius, former Chairman of the District of Columbia City Council)(cited in *District of Columbia v. Greater Washington Central Labor Council, AFL-CIO,* 442 A2d at 116).

Significantly, where Congress wanted to prohibit the District of Columbia from repealing or amending a federal statute in order to protect viewsheds within the District of Columbia, it did so very clearly. For example, the 1912 Height of Buildings Act is a federal statute that was enacted to protect viewsheds throughout the City of Washington. As noted above, the Home Rule Act has a separate provision that expressly bars D.C. from repealing or amending this federal statute. *See* D.C. Code § 1-206.02(a)(6). This suggests that Congress did not believe that the general provision barring D.C. from legislating in areas that affect the "the functions or property of the United States" was sufficient to prevent D.C. from changing the 1910 Height of Buildings Act, and that a specific prohibition was necessary. By implication, had Congress wished to also prohibit the District of Columbia from enacting legislation that permitted overhead wires within the City of Washington, it would have included in the Home Rule Act a specific prohibition relating to overhead wires, similar to the provision related to the 1910 Height of Buildings Act. *See McCray v. McGee,* 504 A.2d 1128, 1130 (D.C.1986) ("[W]hen a legislature makes express mention of one thing, the exclusion of others is implied, 'because there is an inference that all omissions should be understood as exclusions.'").

Nor would it be correct to argue that an impact on "functions or property of the United States" exists because streetcars could affect elements of the L'Enfant Plan, which is listed in the National Register of Historic Places. The fact that D.C. cannot adopt legislation affecting "monuments pertaining to the nation's past" cannot be construed as barring D.C. from enacting legislation that affects historic properties in general, or even historic properties having some national significance. The District of Columbia has on numerous occasions passed legislation that affects historic properties, including, but not limited to the legislation affecting the construction of the D.C. Correctional Treatment Facility, the arena, and the new convention center. As the court explained in *Techworld Development Corp, supra*, the Home Rule Act "withholds authority over property used by the United States in connection with federal governmental functions, and over property of national significance. The Council may not concern itself with the Lincoln Memorial, or the White House, or with the United States Courthouse." *Techworld*, 648 F. Supp. at 115. The streets of the L'Enfant Plan (or for that matter, the streets of the Anacostia Historic District) do not rise to the level of the federal interest in National monuments such as the Lincoln Memorial or federal public buildings.

Accordingly, as discussed in this memorandum, there is a sound basis for arguing that the 1889 statute banning streetcars using overhead wires for their motive power is essentially a local law that does not implicate property or functions of the United States. Therefore, this statute can be amended or repealed by the District of Columbia.

B. D.C. Has the Authority Under the Home Rule Act to Amend or Repeal the 1888 Statute Barring "Other Wires" in the D.C. Streets and Avenues.

The foregoing analysis should also apply with respect to the 1888 ban on overhead wires. If the ban on overhead wires in the context of the 1889 statute does not implicate "property or functions of the United States," then the ban on "other wires" in the context of telecommunications poles, wires and conduits should likewise not implicate "property or functions of the United States." The fact that the 1888 statute banning "other wires" was codified in D.C. Code § 34-1901.01, also suggests that the question of wires is a purely local statute.

Accordingly, there is a sound basis for arguing that the 1888 statute banning "other wires" on local streets is a local law that does not implicate the "property or functions of the United States." Therefore, this statute can also be amended or repealed by the District of Columbia.