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FEDERAL UPDATE

FY'09 Omnibus Appropriations Bill Mired in Senate

The Senate took up consideration of a \$410 billion FY'09 omnibus appropriations bill this week that contains funding increases for State and Tribal Preservation Offices, but cuts funding for the Save America's Treasures (SAT) and eliminates funding for the Preserve America program. As previously reported, under the omnibus bill the State Preservation Offices (SHPOs) would receive \$42.5 million; Tribal Historic Preservation Offices (THPOs) would receive \$7 million; Save America's Treasures would receive \$20 million, a reduction of over \$4.5 million from FY'08. Half of the SAT money is earmarked towards members' historic preservation projects in their districts, leaving \$10 million for competitive awards. Historic preservation is currently being funded at FY'08 levels (\$70.385 million) for the Historic Preservation Fund (HPF) under a temporary continuing resolution (CR), which expires on March 6th. Congress will extend the temporary CR until March 10th so the Senate can finish working on its version of the omnibus.

There are roughly three dozen amendments to the omnibus pending in the Senate on the Republican side and Majority Leader Harry Reid (D-NV) said he will work with the minority to narrow that list to 10 or 12 to be voted upon. However, Reid also warned that House Speaker Nancy Pelosi (D-CA) told him if any amendments were approved in the Senate, which would necessitate returning the bill to the House, that the House would refuse to act on the bill and instead pass the continuing resolution for the rest of the year, resulting in the Historic Preservation Fund (HPF) being funded at FY'08 levels (\$70.385 million), which would be an overall increase over the omnibus-proposed level of \$69.5 million.

Congressional Budget Hawks Propose New Line-Item Veto Powers for President

Sen. Russ Feingold (D-WI) said Wednesday that he would vote against the \$410 billion FY'09 omnibus spending bill during a press conference held with Sen. John McCain (R-AZ) and Rep. Paul Ryan (R-WI) in which the lawmakers introduced legislation (S. 524) that would grant the President line-item veto power and allow lawmakers to strip earmarks from spending bills. The three fiscal hawks introduced the same measure last year. Sen. Feingold was also joined by Sen. Evan Bayh (D-IN), who also came out against the omnibus package. Passage of a line-item veto could spell trouble for historic preservation programs such as Save America's Treasures, which includes 50 percent of its total funding in congressional earmarks each year.

Under the proposed line-item veto bill (S. 524), the President would have to send his rescission requests to Congress within 30 days of signing a spending bill into law. Congress would have to vote up or down on the rescission package within 12 days. If the rescission package is approved by both chambers, it would be sent to the president for his signature. If either

Civil War,
Revolutionary
War, and War of
1812 Battlefields
Authorized to
Receive
Matching Grants

chamber fails to pass the package, the appropriations would be required to be obligated and released. That contrasts with provisions in a previous line-item veto law (PL 104-130) passed in 1996 allowing the president to veto specific line items in spending bills, as well as targeted tax provisions, but contained few deadlines or timetables and would have allowed the president to suspend funding for up to 180 days (six months), even if Congress failed to approve his rescissions. The Supreme Court overturned the 1996 law in 1998 in the case of *Clinton v. City of New York*.

Historic Battlefield Preservation Bills Pass House

The House passed two battlefield protection measures this week under suspension of the rules. H.R. 548, the "Civil War Battlefield Preservation Act of 2009" is "a bill to assist citizens, public and private institutions, and governments at all levels in planning, interpreting and protecting sites where historic battles were fought on American soil during the armed conflicts that shaped the growth and development of the United States, and for other purposes." Under the bill, the Secretary of Interior would establish a battlefield acquisition grant program under which the Secretary may provide grants to eligible entities (including nonprofits) to pay the Federal share of the cost of acquiring interests in eligible sites for their preservation and protection. The non-Federal share of the total cost of acquiring an interest in an eligible site under this section shall be not less than 50 percent. The bill authorizes \$10 million annually for fiscal years 2009 through 2013.

Similarly, H.R. 146, the "Revolutionary War and War of 1812 Battlefield Protection Act" would "amend the American Battlefield Protection Act of 1996 to establish a battlefield acquisition grant program for the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812." Nonprofits would also be eligible recipients and the non-federal match would be 50 percent. The bill authorizes \$10 million annually for fiscal years 2010 through 2014 and \$500K for the Secretary to submit a report to Congress no later than three years after enactment to "reflect preservation activities carried out at the 677 battlefields and associated sites identified in the battlefield report during the period between publication of the battlefield report and the update; changes in the condition of the battlefields and associated sites during that period; and any other relevant developments relating to the battlefields and associated sites during that period."

National Trust Proposes Protections for 'Sacred Sites' in Mining Reform Bill

Sacred Sites
Provisions in
Mining Reform
Bill May Run Up

On February 26th, the House Subcommittee on Energy and Mineral Resources held a hearing on H.R. 699, the "Hardrock Mining and Reclamation Act of 2009", sponsored by House Natural Resources Committee Chairman Nick Rahall (D-WV). H.R. 699 is very similar to the Hardrock Mining and Reclamation Act

Against
Confidentiality
Concerns of
Tribes and
Executive Order
from 1996

of 2007 that passed in the House in 110th Congress. The 2007 bill had a provision to protect 'sacred sites' as defined in Executive Order No. 13007 of May 4, 1996, which states:

"In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

'Sacred site' means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site."

However, in the mark-up of the bill in the 110th Congress, the sacred sites provision was removed due to concerns that it would be too difficult to maintain the confidentiality of surrounding sacred sites. The National Trust is preparing a statement from you for submission to the Committee recommending the inclusion of sacred sites and National Historic Landmarks as areas that would be off-limits to new mining claims in H.R. 699.

Reid Proposes Expanded Authority for FERC to Site
Transmission Lines But Also Protect Culturally Significant Areas

The Federal Energy Regulatory Commission (FERC) would have expanded authority to site transmission lines within broad regional grid road maps to reach "renewable energy zones" under a bill introduced by Senate Majority Leader Harry Reid (D-NV) this week. The bill is the first attempt at upgrading the nation's energy grid to meet the demands of the nation to use more renewable forms of energy, such as wind and solar energy.

Under Reid's draft bill, the Energy Department would have less than one year to identify areas where renewable energy could produce more than 1 gigawatt of electricity or where there was insufficient transmission capacity to carry that much electricity from renewable energy generators in the Western -- the

Expanded FERC
Authority for
Siting
Transmission
Lines Includes
Set-Aside of
Cultural and
Environmentally
Sensitive Federal
Lands

grid west of the Rocky Mountains -- and Eastern inter-connects. A third inter-connect, contained completely within Texas, would be exempt from the bill unless it elected to join. Federal lands that are "environmentally sensitive and culturally significant areas" would be excluded from these inter-connect zones under the Reid bill. The Senate Energy and Natural Resources Committee has scheduled a hearing on transmission lines siting and committee chairman Jeff Bingaman (D-N.M.) indicated he plans to include transmission provisions in an energy bill he plans to introduce in about a month.

STATE AND LOCAL UPDATE

Reauthorization Hearings Held for Maryland State Rehabilitation Tax Credit Program

Reauthorization of Highly Successful State Rehab Tax Credit Program Under Way in Maryland Legislature

On March 4th and 5th, tax-writing committees in both houses of the Maryland General Assembly held hearings about the Maryland Heritage Structure Rehabilitation Tax Credit Program. The historic preservation tax credit program is scheduled to sunset in 2010 at the very moment when the state needs to stimulate private investment, job creation, and growth of the tax base. Reauthorization is needed to keep this green incentive in place creating jobs and stimulating the state's economy. The National Trust sent an alert to its Maryland membership and preservation advocates urging them to contact members the Senate Budget and Taxation Committee and members of the House Ways and Means Committee and urge them to support the program's reauthorization. In addition, National Trust vice president for Public Policy, Emily Wadhams, submitted testimony on behalf of the National Trust in support of reauthorizing the program.

Gaming and Energy Bills Pending in Colorado General Assembly

Revenue from Gaming at Risk from Ill-Conceived Distribution Formula in Bill Pending in Colorado Senate

HB1272, a bill which will determine how proceeds from gaming in the three historic former mining towns is shared between the State Historical Fund and community colleges, passed the House with an amendment that would severely impact the distribution of gaming proceeds that go to the preservation of historic sites in Colorado. HB 1272 contains three components that together will permanently impact the State Historic Fund:

1. The bill sets the historical fund at an extraordinary low base (2008-2009 which was the first year of the smoking ban for casinos and at the heart of economic recession);
2. Locks in annual growth rate at 3%, even though gaming revenues have historically risen at the average annual rate of 5.8%; and
3. Most problematic, base revenues reset, or "ratchet down," when

gaming revenues decrease to the lowest year and could only grow at a maximum 3% rate. Therefore, the historical fund starts with the lowest possible base year, ratchets down to the lowest level each year, and will never recover based on the maximum 3% annual growth rate.

Efforts for Colorado Preservation, Inc. (CPI) and the National Trust to introduce an amendment in the Senate in the Senate Education Committee failed to date. However, preservationists will have one last chance to fix the revenue stream problem by supporting an amendment on the Senate floor, sponsored by Sen. Al White, which will eliminate the cap of 3% and instead substitute the idea of averaging base years while also requiring the Gaming Commission to do annual reports on the gaming revenues.

Renewable Energy Financing Bill Could Benefit Older and Historic Homes

SB51, the Renewable Energy Financing Act, would facilitate the financing of energy efficient structures, which could also benefit older and historic residences in Colorado. The bill is sponsored by Senator Morgan Carroll (D-Aurora) and will help average home owners, for the first time, finance renewable energy upgrades for their homes and businesses. By bringing alternative energy upgrades within reach for hundreds of thousands of people in Colorado, this bill will save people money, increase energy independence, and create thousands of jobs. SB 51 will also bring in millions of dollars in investment to Colorado by attracting investment capital and renewable energy firms through the following:

- *Creating a marketing incentive* for banks, mortgage lenders and other financial lenders to offer short term or long term financing for: (1) solar, (2) wind (3) geothermal; or (4) energy efficiency investments.
- *Giving limited collateral* to lenders (and limited investment authority to Treasurer) in the private sector who choose to underwrite green loans to help encourage lending and minimize risk for: (1) solar, (2) wind; (3) geothermal; or (4) energy efficiency investments.
- *Creating third-party power purchase agreements* (residential, business and commercial) and expanded through the utilities where consumers can have a third party buy the equipment, install it and maintain it but where the rebate is given the company instead and the consumer is thereby allowed to make monthly payments to the company like a lease-purchase agreement. This provision opens up new companies and jobs in Colorado.

New Financing
Schemes for
Renewable
Energy Could
Help Owners of
Older and
Historic Homes
Make Energy
Efficiency
Upgrades More
Affordable

Major Efforts to Restore Funding for Main Street and Expand State Rehab Credit in the Works

State Rehab Credit and Main Street Funding Concerns Confront Montana Legislature

National Trust vice president for public policy, Emily Wadhams, submitted a letter of support dated March 3rd to the Montana House Taxation Committee in support of changes to HB 631, a bill to increase the state rehabilitation tax credit from 25% to 100% of the federal rehabilitation tax credit. Wadhams' letter supported the bill's provision to include transferability to ensure that the credit holder has sufficient liability for state tax credits that the credit can be used to offset. The House Committee on Federal Relations, Energy and Telecommunications held a hearing on the bill on February 23rd.

The National Trust is also trying to restore funding for the Montana Main Street program. When the Joint Budget Committee eliminated funding for the program, National Trust Montana Advisor and State Senator Bob Hawks convinced the primary opponent of the program to restore funding when the Senate takes up the budget. However, there is still the need to get an amendment to restore funding in the House. The Trust has sent an alert to its Montana members to contact their state representatives in support of this effort. In addition, the House Appropriations Committee is scheduled to convene this week and will attempt to reinstate the budget for Main Street funding in advance of any full House action.

Nevada Heritage and Cultural Programs Under Threat from Budget Cuts

Governor's Proposed Budget Threatens to Cut Historic Preservation Funding in Half

Nevada governor Jim Gibbons' proposed 2010 budget would drastically cut spending on Nevada's heritage and cultural programs. Funding for the Nevada State Historic Preservation Office would be cut in half, and the Nevada Historical Society's ten-person staff would be reduced to five.

The Governor's draconian budget cuts would eliminate historic preservation grants that support community projects, including the publication of walking tours, historic surveys of places as diverse as the towns of Sparks and Henderson, as well as "bricks and mortar" work on historic buildings. Among recently funded projects were the creation of disabled access to programming at the Fleischman Planetarium and the relocation of a threatened Las Vegas railroad cottage to the Clark County Heritage Museum. In addition, significant heritage sites such as the just-renovated East Ely Railroad Depot Museum and the Comstock History Center in Virginia City would be closed, and surviving museums would be open only four days per week.

The National Trust has sent an alert to its Nevada membership and preservation advocates urging them to contact their senators and representatives to restore these funding cuts.

