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## ***FEDERAL UPDATE***

Lobby Day 2009 Marks Big Push for Preservation Agenda with Congress

Preservationists descended on Capitol Hill on March 10<sup>th</sup> for Lobby Day 2009 with an ambitious preservation agenda for Congress to consider in the coming weeks and months. Among the agenda items that were being advocated for on the Hill were increased funding for historic preservation programs such as SAT, Preserve America, and state and tribal preservation offices; improvements to the federal rehabilitation tax credit; and historic preservation provisions, protections and funding that should be included in the next surface transportation reauthorization bill.

Congress won't wait until President Obama's complete FY 2010 budget is released in April before adopting a budget resolution and beginning the appropriations cycle in earnest. House and Senate leaders say they want to adopt their respective budget resolutions before the spring recess (beginning April 4<sup>th</sup>), which means the Budget committees will likely mark up their budget resolutions the week of March 23. In addition, lawmakers plan to move quickly on transportation and climate change in the spring, two areas that could greatly affect historic preservation programs, priorities and tax incentives.

Stay tuned for breaking news developments.

Omnibus Lands Package Fails in House by Two Votes

The omnibus lands package (S. 22) containing authorization bills for the Save America's Treasures (SAT), Preserve America (PA) and National Landscape Conservation Systems (NLCS) went to the House floor for a vote on Wednesday under suspension of the rules, which two-thirds majority vote to win passage. Prior to the House vote, the National Trust worked with the House Preservation Caucus and circulated a "Dear Colleague" letter of support for S. 22 to all House members.

Unfortunately, the House vote of 282-144 (6 non-voting) on March 11<sup>th</sup> resulted in the bill falling short by just two votes of the needed two-thirds majority. S. 22 proponents now must decide whether to try again under suspension or take the legislation through the House Rules Committee, which would the bill to be brought back to the floor under a rule that would allow it to pass by a simple majority vote. Under the latter scenario, if the bill passes the House under a closed rule, Senate Majority Leader Harry Reid (D-NV) has promised the Senate will attach the measure to HR 146, the Revolutionary War and War of 1812 Battlefield Protection Act, which has already passed the House. If the Senate passes S. 146 with S. 22 attached, the House can either concur with the legislation or send it back to the Senate again.

FY'09 Spending Bills Finally Settled But HPF Suffers Loss of Funding for PA and SAT programs from Previous Fiscal Year

### FY'09 Omnibus Spending Bill Signed into Law

The Senate cleared the FY'09 omnibus appropriations bill this week, including funding for the Interior Department and historic preservation programs. The omnibus allocated \$68.984 million for the Historic Preservation Fund (HPF), including: \$19.851 million for Save America's Treasures (SAT) grants; \$42.185 million for the State Preservation Offices (SHPOs); and \$6.948 million for Tribal Historic Preservation Offices (THPOs). The final totals for HPF and its sub-accounts included a rescission of \$516,000 (.74% reduction) for "prior year unobligated funding." President Obama signed the omnibus spending bill into law on March 11th.

Preservationists Hopeful that New Interior Appointee Will Make Preservation a Priority on Public Lands and in National Parks

### Salazar Appoints Deputy Assistant for Fish, Wildlife and Parks

Interior Secretary Ken Salazar appointed Will Shafroth, a founder and former executive director of two Colorado conservation groups, to be Interior deputy assistant secretary for fish, wildlife and parks. Shafroth brings a solid record of conservation to the job having helped found the nonprofit Colorado Conservation Trust and served as its executive director from 2000 to 2008. Shafroth raised millions in private donations and leveraged public funds at the Conservation Trust, helping the Trust preserve 30,000 acres of wildlife habitat and open space. From 1994 to 2000, Shafroth served as the first executive director of the Great Outdoors Colorado Trust Fund, a statewide land conservation program that Salazar helped create when he was executive director of the Colorado Department of Natural Resources. As the program's executive director, Shafroth oversaw the granting of \$250 million for 1,600 projects that preserved 300,000 acres of wildlife habitat, ranchland and open space. The program also established parks, trails, environmental education centers, a statewide cattlemen's land trust and a network of youth conservation corps. Preservationists are hopeful that Shafroth's track record is a good omen and that he will help direct attention and funding for historic and cultural resources on public lands and in the national parks.

Unintended Consequences of Earmark Reform Could Affect Overall Funding of Heavily Earmarked Preservation Programs such as SAT

### Earmark Reform Could Affect Historic Preservation SAT Projects

The House leadership announced a new earmark reform proposal on March 11th that follows on earmark reforms instituted in the House in 2007. At first glance, it does not appear that any of the earmark reforms would adversely impact programs such as Save America's Treasures (SAT), which traditionally has seen half of its funding earmarked by lawmakers. The National Trust will continue to monitor the implementation of these reforms as they effect historic preservation earmarks in SAT and/or other federal programs throughout the appropriations cycle. Many of the reforms are geared towards increased transparency and accountability of each individual earmark request, but the proposal does not take into account the possible effects on overall spending for programs that are traditionally heavily earmarked by lawmakers, such as SAT. For example, it is unclear whether the new provisions may result

in a decrease in overall funding for programs that have been earmark favorites in the coming budget years, which will obviously be constrained by budget pressures created in the wake of the nation's fiscal and economic crisis. In addition, heavily earmarked programs may be unfairly viewed as extraneous or 'pork-barrel' spending and create bias against these programs in the annual budget and appropriations cycle.

Below is a summary of the new earmark provisions.

- *Members are Required to Post All Requests Online:* To offer more opportunity for public scrutiny of member requests, members are required to post information on their earmark requests on their websites at the time the request is made with the proposed recipient, the address of the recipient, the amount of the request, and an explanation of the request, including purpose, and why it is an appropriate use of taxpayer funds.
- *Certify No Financial Interest:* At the time the request is made, the member must send the committee a letter identifying the earmark, the entity that will receive the funds and their address, what the earmark does, and a certification that neither the requesting member nor their spouse will benefit from it financially. The certification will be available on the internet at least 48 hours prior to a floor vote on the bill.
- *Executive Review:* The appropriate agency will be given 20 days to check that the proposed earmark is eligible for funding and meets goals established in law.
- *Early Public Disclosure of Subcommittee Decisions:* Each bill must be accompanied by a list identifying each earmark that it includes and which member requested it. To increase the time available for public scrutiny of committee decisions, earmark disclosure tables will be made publically available the same day as the House or Senate Subcommittee rather than Full Committee reports their bill.
- *A Cap of 1%:* Total funding for non-project based earmarks will be limited to 50% of the 2006 levels and no more than 1% of the total discretionary budget.
- *Votes:* Members are able to offer floor amendments on earmarks under the rules of the House and Senate. Over 70 such votes were taken on individual earmarks in 2007 in the House.
- *Competitive Process:* Earmarks directed to for-profit entities will undergo a competitive bidding process.
- *Rescissions:* In the event that any real "clunker" earmarks are discovered after enactment, under the rescission process on the books the Congress can consider proposals by the President to rescind funding.

High Priority National Transmission Lines Raise Concerns for Environmental and Cultural Resource Review Processes

The Senate Energy and Natural Resources Committee held a hearing on March 12<sup>th</sup> regarding the siting of "high priority national transmission projects" for

Lines Could Place  
Historic  
Preservation  
Review in Back  
Seat to Upgrading  
the Nation's  
Power Grid

upgrading the nation's power grid in the eastern and western interconnections. The hearing comes on the heels of the committee's draft bill to plan "for the addition of high priority national transmission projects" which "must take into consideration support for the development of new renewable generation, opportunities for reduction of emissions from regional power production, cost savings resulting from congestion reduction and other efficiencies, enhanced fuel diversity, reliability, and other national priorities."

Streamlining of  
Reviews and  
Inexperienced  
Planning Entities  
Could Jeopardize  
Quality of  
Environmental  
and Cultural  
Resource Review  
Processes

The draft energy bill does include a provision of environmental review and hints at a streamlined process citing the Federal Energy Regulatory Commission (FERC) as the lead agency "for purposes of coordinating any Federal authorizations and environmental reviews or analyses required for the project" and "in consultation with other affected agencies, prepare a single environmental review document that will be used as the basis for all decisions under Federal law relating to the proposed project ... including siting constraints and mitigation measures."

Preservationists will most certainly need to monitor these environmental review provisions going forward to ensure all applicable historic and cultural resources protections, including Section 106 under the National Historic Preservation Act, are given full consideration in any FERC-led coordinating effort to site transmission lines. Further complicating any review assessments are the potential roles for "regional planning entities" designated by FERC that may have little or little no experience in carrying out environmental or Section 106 review.

### **STATE AND LOCAL UPDATE**

Montana Legislators Move Forward on State Rehab Tax Credit and Stimulus Funding Proposals

Tax Credit  
Proposal and  
Increased  
Funding for  
Preservation  
from Stimulus  
Bring Cheers  
from Montana  
Preservationists

Montana preservationists had reason to cheer this week when HB 631 passed out of the House Taxation Committee on March 11<sup>th</sup> with near unanimous support! HB 631 would increase the state rehabilitation tax credit from 25% to 100% of the federal rehabilitation tax credit and include transferability to ensure that the credit holder has sufficient liability for state tax credits so that the rehab credit can be used as an offset. The official vote was 19-1 in favor of the bill, which speaks to its broad bipartisan and statewide appeal.

In addition, hearings for the distribution of the recently-passed federal stimulus money were held on March 11<sup>th</sup> and 12<sup>th</sup> in which the Montana Preservation Works Program was presented to the Joint Appropriations Subcommittee on General Government. The Montana Preservation Works Program would provide \$10 million directly toward historic preservation projects that would quickly and positively impact the economic vitality of Montana's communities, including the following:

- Montana's Historic Infrastructure: \$6.5 million for direct "bricks and

mortar” grants statewide.

- Montana’s Agricultural Heritage: \$750,000 for grants to owners of historic barns & agricultural buildings statewide.
- Montana’s County Courthouses: \$1.5 million for courthouse assessment and bricks and mortar grants.
- Montana Local Preservation: \$1 million to be distributed to Certified Local Governments (CLGs), Tribal Preservation Offices, and Preserve America communities to sustain their own, small community grant programs.
- Montana State Historic Preservation Office: \$250,000 for data upgrades and streamlining the granting/consulting process.





