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FEDERAL UPDATE

Year End Omnibus Bill Possible for FY'10 Interior Appropriations and Historic Preservation Funding

The prospects for completing an Interior Appropriations bill (HR 2996) conference to resolve spending differences between the House and Senate regarding historic preservation funding grew dimmer this week as lawmakers began work on a second temporary continuing resolution (CR) to fund the federal government past October 31st and are laying the groundwork for a year-end omnibus to finish the remaining spending bills and conference reports. It is unclear if appropriators and Interior conferees will put off conferencing the Interior bill entirely as Senate Appropriations Committee chairman Daniel Inouye (D-HI) stated this week that he hopes the Senate will finish up an omnibus bill by the Thanksgiving recess or the first of December. The Interior, Defense and Transportation-HUD spending bills are ready for conference and it is possible one of the three may pass individually while the remaining bills would be rolled into the omnibus. In addition, no final decisions have been made about the possible length of the second temporary CR, which would affect the timing of the year-end omnibus bill.

Given the uncertainty of rolling several large spending bills together in an omnibus, the National Trust is concerned about the lack of opportunity to advocate for the higher funding levels approved in the House-passed version of the Interior bill if there is no formal conference on the bill. However, the House has scheduled time for floor debate to consider the Interior conference report for October 29th, which bodes well for a formal conference playing out early next week.

As previously reported, the Historic Preservation Fund (HPF) spending (\$90.675 million) in the House Interior Appropriations bill allocates \$46.5 million for State Historic Preservation Offices (SHPOs), \$8 million for Tribal Historic Preservation Offices (THPOs), \$30 million for Save America's Treasures (SAT) grants, and \$6.175 million for the Preserve America. The Senate version of the Interior bill matches the House funding levels for SHPOs and THPOs, but reduces funding for SAT grants (\$20 million) and Preserve America (\$3.175 million) for a total of \$74.5 million for the HPF. In addition, the Senate bill funds Preserve America out of the National Park Service's National Recreation budget instead of the HPF.

EPA to Issue Analysis of Senate Climate Change Bill Costs

The Environmental Protection Agency (EPA) is scheduled to release a cost analysis of the Senate's climate change bill (S. 1733) on October 23rd that will supposedly ease fears about the cost and expense of implementing a cap and trade system of emission allowances. The hope is that S. 1733, the "Clean Energy Jobs and American Power Act" introduced by Sens. John Kerry (D-MA) and Barbara Boxer (D-CA), can be marked up by the five committees of

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jurisdiction in the Senate by Thanksgiving. However, Sen. Jay Rockefeller (D-WV) said no agreement has been made with coal-producing states on the bill's impact which would hinder his committee – the Committee on Commerce, Science, Transportation – from doing any markup leading up to Thanksgiving recess. In addition, Rockefeller stated that he has received no indication from the Obama Administration that it is serious about finishing the climate change bill this year.

The Boxer-Kerry bill includes smart growth provisions, energy-efficiency incentives for historic properties and green job-training. In addition, the bill's "district energy" provisions provide preservationists with an opportunity to include the more advanced concepts of embodied energy and superior Life-Cycle Costs and Analysis (LCA) of older and historic buildings in the mix of eligible activities for grant funding based on savings of [potential] "mechanical energy." S. 1733 also prescribes the creation of a national building code, which poses another challenge and opportunity for historic preservationists to advocate for the inclusion of performance-based standards of energy efficiency for older and historic buildings as an alternative to prescriptive building codes, which tend to favor new construction.

Proposed NEPA Streamlining for Energy Development on Tribal Lands Raises Preservation Concerns

Preservationists Concerned About Categorical Exemptions from NEPA Review and Compliance that May Affect Historic and Cultural Resources on Tribal and Public Lands

The Senate Select Committee on Indian Affairs held an oversight hearing on October 22nd to discuss a concept paper unveiled last month by committee chairman Byron Dorgan (D-ND) and ranking member John Barrasso (R-WY) that addresses some of the biggest obstacles to energy development on tribal lands, including the streamlining of environmental impact studies (EIS) required under the National Environmental Policy Act (NEPA). NEPA was enacted in 1969 in part to "preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice."

Testimony was heard from Marcus Levings, Chairman, Three Affiliated Tribes of Fort Berthold, New Town, North Dakota; James Roan Grey, Chairman, Indian Country Renewable Energy Consortium Board of Directors, and Chairman, Osage Nation, Pawhuska, Oklahoma; Steve Herrera, Tribal Councilperson, Southern Ute Indian Tribe, Ignacio, Colorado; and Ralph Sampson, Chairman, Yakama Nation, Toppenish, Washington.

Several of the witnesses from the Tribes commented on the impediments created by NEPA compliance on the development of energy leases, particularly in the areas of facilitating the necessary infrastructure (i.e., roads, pipelines, etc.) necessary for energy development and the siting of transmission corridors on tribal lands. There was general acknowledgement in all of the testimony that the current NEPA process adds an additional two to four years

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for approval of energy development on tribal lands because each Federal sub-agency with jurisdiction over energy development on tribal lands is required to perform its own EIS, creating further delays. All of the witnesses were unanimous in their support for a streamlined NEPA process that would require just one EIS for tribal energy leases. To that end, the Dorgan paper proposes to streamline the permitting process for energy development projects by setting up an "Indian Energy Development One-Stop-Shop Demonstration Project" within the Interior Department and the bundling of leases and right-of-ways on tribal lands. Criticism from witnesses was also directed at Congress regarding oversight of energy development on tribal lands as enunciated in the Energy Policy Act of 2005, which created an Office of Indian Energy Policy and Programs within the Department of Energy (DOE) but which was never funded by lawmakers.

Preservationists are always concerned about the impact of any streamlining proposals concerning NEPA that could set a precedent and subsequently create categorical exclusions for energy development which may not fully consider the impact of federal agency actions on historic and cultural resources located both on tribal and public lands.

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