

US Congressional Action This Term on H.R. 5861 (House Resolution 5861) The National Historic Preservation Act Amendments of 2006

The National Historic Preservation Act of 1966 (NHPA) and its amendments form the framework under which federal agencies identify and document districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. Section 106 of the NHPA specifies the cultural resource compliance requirements for Federal applicants and licensees and their regulatory compliance obligations.

These applicants and licensees have Section 106 Review documentation obligations on projects that are federal, federally assisted, or federally licensed or permitted. Such projects are called "undertakings" due to their federal funding, licensing, or permitting status. Undertakings for which cultural resource regulatory compliance is needed typically require the services of professional cultural resource consultants to complete Section 106 Review documentation as enacted by the National Historic Preservation Act of 1966 and its amendments.

Concern on the Hill

The past several years have seen increasing concern over the National Historic Preservation Act of 1966, its amendments, and its effect on federal or federally supported undertakings. Specifically, some in Congress believe that the NHPA is being used to slow the progress of undertakings by requiring overly broad evaluations and considerations of the possible effects of projects on archaeological and historic sites.

The Issues

The provisions that are in question would prevent State Historic Preservation Officers (SHPOs) from requiring federal project applicants, (and their cultural resource management (CRM) consultants), in undertakings for which cultural resource regulatory compliance is necessary, to identify historic properties outside the undertaking's Area of Potential Effect (APE) as determined by the project's lead federal agency.

With over 1,100 Section 106 Review projects completed in the southeastern United States, History, Incorporated has the specialized knowledge and experience to perform the required Section 106 Review documentation and to secure all necessary agency approvals. History, Incorporated provides professional services and accurate, high quality deliverables in fast turnarounds at reasonable cost.

We would appreciate the opportunity to assist with upcoming projects. If you have questions or would like for History, Incorporated to provide further information or pricing for an upcoming project, please contact Jaime Destefano by phone (615-228-3888) or email (jaimedestefano@HistoryIncOnline.com).

This regulatory scheme unfolded in 2005 within the wireless telecommunications industry. The construction of wireless telecommunications facilities is considered a federal undertaking that requires Section 106 Review for both visual and direct effects within specified Areas of Potential Effect. To speed the regulatory process for these undertakings the Federal Communications Commission enacted the Nationwide Programmatic Agreement (NPA), effective March 7, 2005. The NPA does not require that applicants or their consultants identify historic properties outside the undertakings APE, as defined by the FCC NPA. The effect of the NPA in some states was to "shrink" the APE by as much as 1.5 miles in radius. For instance, in some states the SHPO believed that a 2-mile APE for visual effects was appropriate, but the FCC effectively ruled that a 1/2-mile APE was sufficient in some cases.

House Resolution 5861 includes a provision clarifying that a lead federal agency may assume that a SHPO has no objection to a finding of "no historic properties affected" or "no adverse effect" if the SHPO does not respond to such a finding within 30 days. H.R. 5861 also amends the NHPA to dissuade local jurisdictions from altering regulations (such as zoning) on a property based on findings of National Register eligibility unless the owner of the property receives "full due process protection," including public hearings.

Action on the Hill

The Senate version of the legislation, S. 1378, which was passed by that chamber on September 29, 2006, does not contain the House bill's (passed by the House on September 25, 2006) streamlining provisions. It remains to be seen if the two congressional bills can be reconciled before the end of this Congress.

If you have questions, please do not hesitate to contact Jaime Destefano by phone (615-228-3888) or email (jaime.destefano@HistoryIncOnline.com).

We believe our experience in obtaining cultural resource compliance approvals for public and private undertakings makes History, Incorporated an excellent choice for your organization.