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National Historic Preservation Act: Steel Manufacturers Association Comments to U.S. Senate Committee on Energy and Natural Resources

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The Steel Manufacturers Association (“SMA”) submitted comments for the record for a hearing held by the United States Senate Committee on Energy and Natural Resources addressing the National Historic Preservation Act (“NHPA”).

The comments were submitted pursuant to an October 29th letter to Committee Chairman Mike Lee and Ranking Member Martin Heinrich.

A focus of the comments was the Section 106 consultation process under the NHPA.

The NHPA addresses historic properties.

Historic properties are buildings, structures, objects, districts, or archeological sites that are listed or eligible for listing in the National Register of Historic Places. The NHPA requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve, and provides the AHCP, consulting parties, and the public the chance to weigh in on such matters before a final decision is made.

SMA notes that it represents electric arc furnace steel manufacturers. These facilities are stated to account for more than 70 percent of domestic steel capacity. Further, they are stated to range in size from America’s largest publicly traded steel producers to single facility, privately-owned family businesses.

Concern is expressed that steel manufacturers’ efforts in deploying \$25 billion in capital here in the U.S. to “modernize, expand, and construct facilities” have been delayed by what the organization characterizes as “cumbersome permitting laws.” The federal permitting system is characterized by SMA as broken, and references that the NHPA is “no exception”.

The letter states that steel manufacturers face difficulties navigating:

... well-intentioned requirements surrounding historic preservation; in particular, the consultation requirements under section 106 of the NHPA.

The problems are described as including:

- Nebulous timelines.
- Lack of coordination.

- Varied scope.

Changes to the 106 consultation process are suggested to “accelerate project delivery while protecting our nation’s historic properties.”

SMA submits what it describes as broad principles for consideration which include:

- Align trigger for NHPA consultation with “major federal action” requirement under the National Environmental Policy Act.
- Refine scope of “area of potential effects” and property eligibility determinations.
- Clarify consideration of impacts to mean those with direct effects on historic properties.
- Establish timelines for consultation with consulting parties • Prescribe limits to judicial review of agency decisions.

A copy of the SMA comments can be found [here](#).