

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



March 28, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
Capitol Building, H-232
Washington, DC 20515

The Honorable Hakeem S. Jeffries
House Minority Leader
U.S. House of Representatives
Capitol Building, H-204
Washington, DC 20515

Dear Speaker McCarthy and Minority Leader Jeffries:

As consideration of the Lower Energy Costs Act (H.R. 1) proceeds, the Advisory Council on Historic Preservation (ACHP) would like to provide comments on Section 20214 of the bill, which addresses permitting for accessing federal energy resources from nonfederal surface estate. Under specified circumstances, federal drilling permits would not be required, and subsequent oil, gas, and geothermal exploration and production activity would not be subject to certain environmental reviews, including review under Section 106 of the National Historic Preservation Act (54 U.S.C. §306108) (Section 106). The ACHP is the independent federal agency that is charged with advising the President and Congress on historic preservation matters and oversees the Section 106 review process. In that capacity, the ACHP urges removal of references to Section 106 in Section 20214 of H.R. 1, since administrative options already are available to permit streamlining of Section 106 review.

Section 106 of the NHPA requires federal agencies to consider the effects of projects, carried out by them or subject to their assistance or approval, on historic properties and to provide the ACHP an opportunity to comment on these projects prior to a final decision on them. Because of Section 106, federal agencies must assume responsibility for the consequences of such projects on historic properties and be publicly accountable for their decisions. In the almost six decades since the passage of the National Historic Preservation Act, Congress has usually avoided crafting legislative exemptions to Section 106, since they can cause confusion in the administration of the government-wide Section 106 process and are typically unnecessary. Exemptions to Section 106 review are often problematic, since they may result in project impacts to historic properties not being reviewed and considered adequately, if at all. In the case of Section 20214 of H.R. 1, the oil, gas, and geothermal exploration and production activity could proceed if a state permit is issued, but state permitting processes may or may not consider impacts to historic properties.

Since the regulations that implement Section 106 (36 C.F.R. Part 800) already provide a variety of tools—known as program alternatives—to adapt and streamline the review process to the needs of agency programs, the ACHP has consistently advised against the use of legislative exemptions, and Congress typically has agreed with such advice. Having these tools available simply negates the need for legislative exemptions from Section 106 review. In lieu of a legislative exemption, the ACHP would be happy to explore options with relevant federal agencies regarding how use of program alternatives could streamline Section 106 review for oil, gas, and geothermal exploration and production activity addressed by Section 20214 of H.R. 1. Likewise, the ACHP can assist agencies in integrating review of projects under Section 106 and the National Environmental Policy Act (as recommended in joint guidance published by the

ADVISORY COUNCIL ON HISTORIC PRESERVATION

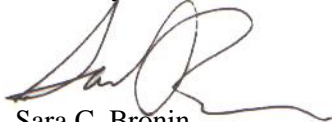
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ACHP and the Council on Environmental Quality), thus even further expediting environmental review of the projects addressed by Section 20214.

Last year's Inflation Reduction Act provided significant multi-year funding for a number of federal agencies—including the Department of the Interior (DOI)—to improve environmental review of infrastructure projects. The fruits of that investment should facilitate the permitting process for the oil, gas, and geothermal exploration and production activity addressed by Section 20214, further suggesting that exemption of such projects from Section 106 review is not needed. Further efficiencies could be achieved through additional funding for State Historic Preservation Officers (SHPOs) and federally recognized Indian tribes, key partners whom agencies must consult in making decisions and reaching conclusions during Section 106 review. The ACHP has encouraged the Federal Permitting Improvement Steering Council and DOI to consider ways in which they might help enhance SHPO and tribal capacity. Congress also has a critical role to play through the level of funding provided to SHPOs and tribes through the Historic Preservation Fund in the FY 2024 budget.

For the reasons discussed above, the ACHP urges removal of references to Section 106 in Section 20214 of H.R. 1. Please feel free to contact me if you have any questions on this advice or if the ACHP can be of any assistance during further consideration of H.R. 1. Our Executive Director Reid Nelson can also be reached at rmelson@achp.gov. Thank you.

Sincerely,



Sara C. Bronin
Chair

cc:

House Committee on Natural Resources
House Committee on Transportation and Infrastructure
House Committee on Energy and Commerce
House Committee on Agriculture
House Committee on the Budget