

Milford Wayne Donaldson, FAIA
Chairman

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Preserving America's Heritage

February 8, 2016

The Honorable Thomas McClintock
Chairman, Subcommittee on Federal Lands
United States House of Representatives
Rayburn House Office Building, 2331
Washington, DC 20515-0504

Dear Mr. McClintock:

I am writing to you both as a constituent and as the presidentially-appointed Chairman of the Advisory Council on Historic Preservation (ACHP). I have had the honor and the privilege of serving as Chairman since 2010 and have come to have a deep understanding and appreciation for the important role that the ACHP plays in the national historic preservation program. Created by the Congress in 1966 and made an independent agency in 1976, the ACHP is unique in the federal government as the agency whose sole mission is historic preservation.

Our statutory charge is to advise both the President and the Congress on historic preservation matters. In particular, the ACHP manages the process that the Congress created to ensure that federal agencies consider the impacts of their projects on the historic resources that local communities value. Under this process, citizens are given the opportunity to participate in the planning process for federal projects, offering them a window on federal decision-making and a forum for expressing their concerns and ideas. The system has been a highly successful example of public engagement since 1966 and, from my experience as California State Historic Preservation Officer (SHPO) under Governor Schwarzenegger, I can testify to it as a model of federalism, being largely administered by state officials.

During my tenure at the ACHP, I have come to recognize that there are important ways that the agency could be improved. Foremost is the area of leadership and accountability. It will undoubtedly surprise you to learn that the ACHP lacks a full-time policy-level head. I as Chairman, along with the other presidentially-appointed members, serve in a part-time capacity. The absence of an appointee who is on the job in Washington on a full-time basis limits the ACHP's impact within the Executive Branch and deprives the Administration and the Congress of an executive who is politically accountable. Conversion of the position to full time can be done with a simple amendment to the ACHP's authorizing legislation and the cost would be minimal, less than \$225,000 annually.

Another organizational shortcoming is the absence of a representative of Tribal Historic Preservation Officers (THPO) in the ACHP's membership. The federal government relies heavily on SHPOs carrying out the national historic preservation program in the states and likewise on THPOs on their respective reservations. In 1980, the Congress amended the membership of the ACHP to include a representative of the national organization of SHPOs. It is time to do the same thing for the national organization of THPOs.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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I am enclosing a draft bill, along with a background statement, that would achieve these two simple but important goals. Your Federal Lands Subcommittee will be taking up H.R. 2817 this week, which would amend the National Historic Preservation Act in order to extend the authorization for the Historic Preservation Fund. That Act also contains the authorities of the ACHP and our amendments could be a simple addition. We would also welcome any other opportunities to incorporate our amendments into related legislation, such as the National Park Service Centennial bill.

The ACHP will be submitting formal testimony for the record at this week's hearing on H.R. 2817, urging action as I have set forth in this letter. I hope you will be supportive of our efforts and I would like the opportunity to speak to you personally about the issue. I will follow up with your staff to arrange such a conversation.

Sincerely yours,

A handwritten signature in blue ink that reads "Milford Wayne Donaldson". The signature is written in a cursive style with a large initial "M" and "W".

Milford Wayne Donaldson, FAIA
Chairman
Advisory Council on Historic Preservation

Attachments

A Bill

To amend division A of subtitle III of title 54 of the United States Code, known as the National Historic Preservation Act, to provide a full time Chairman and add the General Chairman of the National Association of Tribal Historic Preservation Officers to the membership of the Advisory Council on Historic Preservation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Historic Preservation Act Amendments of 2015.”

SEC. 2. NATIONAL HISTORIC PRESERVATION ACT.

(a) ADDITIONAL MEMBER.—Section 304101(a) of title 54, United States Code, is amended—

(1) by redesignating paragraphs (8), (9), (10) and (11) as paragraphs (9), (10), (11), and (12), respectively; and

(2) by inserting a new paragraph (8) as follows:

“(8) the General Chairman of the National Association of Tribal Historic Preservation Officers;”

(b) FULL TIME CHAIRMAN.—Section 304101 of title 54, United States Code, is further amended –

(1) by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively; and

(2) by inserting a new paragraph (e) as follows:

“(e) (1) After January 1, 2016, the Chairman shall:

(A) be appointed by the President;

(B) serve full time; and

(C) be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(2) the Chairmen before the first appointment of a Chairman in accordance with subsection (1) of this paragraph will receive \$100 per diem when engaged in the performance of the duties of the Council, and receive reimbursement for necessary

traveling and subsistence expenses incurred by them in the performance of the duties of the Council.”; and

(3) in subsection (f) (as redesignated), by striking “may act in place” and inserting “shall perform the functions”.

(c) CONFORMING CHANGES.—

(1) Section 304101 of title 54, United States Code, is further amended—

(A) in subsection (b), by striking “, (7) and (8)” and inserting “and (7) to (9)”;

(B) in subsection (c), by striking “under paragraphs (1) and (9) to (11)” and inserting “under paragraphs (10) to (12)”, and by striking “An appointed member may not serve more than 2 terms” and inserting “An appointed member, other than the Chairman of the Council, may not serve more than 2 terms”;

(C) in subsection (f) (as redesignated), by striking “paragraph (5), (6), (9), or (10)” and inserting “paragraph (5), (6), (10), or (11).”; and

(D) in subsection (g) (as redesignated), by striking “Twelve members” and inserting “Thirteen members”;

(2) Section 304104 of title 54, United States Code, is amended by inserting after the first sentence the following: “The Chairman of the Council shall be compensated as provided in paragraph (e) of Section 304101 of this title.”; and

(3) Section 304105(a) of title 54, United States Code, is amended by striking “report directly to the Council” and inserting “report directly to the Chairman”, and striking “duties as the Council may prescribe” and inserting “duties as the Chairman may prescribe.”

(4) Section 5314 of title 5, United States Code, is amended by adding at the end the following new item: “Chairman of the Advisory Council on Historic Preservation.”.

(d) CLARIFICATION.—Section 7302 of the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 16 U.S.C. 469n) is amended –

(1) in subsection (d)(2), by striking “Council” in each place it appears and inserting “Chairman of the Council”; and

(2) in subsection (d)(4), by striking “Council” and inserting “Chairman of the Council”.

National Historic Preservation Act Amendments of 2015
Section-by-Section Analysis

Section 1: Lists the short title of the bill.

Section 2: Amends the National Historic Preservation Act to add the General Chairman of the National Association of Tribal Historic Preservation Officers as a new member of the Advisory Council on Historic Preservation, make the position of the Chairman of the Advisory Council on Historic Preservation a full time position, makes several conforming amendments, and substitutes the Chairman of the Advisory Council on Historic Preservation for the Council in carrying out certain provisions of the Act pertaining to the Preserve America program.

**AMENDMENTS TO THE NATIONAL HISTORIC PRESERVATION ACT TO PROVIDE FOR
A FULL TIME CHAIR OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION AND
ADD THE GENERAL CHAIRMAN OF THE NATIONAL ASSOCIATION OF TRIBAL
HISTORIC PRESERVATION OFFICERS AS A MEMBER**

Since the Congress established the Advisory Council on Historic Preservation (ACHP) as part of the National Historic Preservation Act of 1966 (NHPA), both the national historic preservation program and the ACHP have matured and grown dramatically. Preservation has become a mainstream movement as the nation's communities experience the renewal of historic downtowns and neighborhoods. Preservation strategies enable citizens to enjoy historic resources in rural areas and on public lands. The national historic preservation program has recognized over a million historic properties, making them eligible for federal tax credits, grants, and protection. Preservation tools and techniques make historic properties a living part of contemporary America, creating jobs and economic growth while saving important places of the past. The core partnership of all levels of government and the private sector is uniquely American and underlies the success of the program, which has been strengthened and expanded by the Congress and the Executive Branch repeatedly over nearly five decades.

Likewise, the ACHP has evolved and matured during the past half century. Initially an adjunct of the National Park Service (NPS), the Congress made the ACHP an independent federal agency in 1976. At that time, it authorized the ACHP to issue regulations to guide federal agencies in meeting their obligations to consider the impacts of their actions on historic properties. Today over 125,000 federal actions a year are reviewed in accordance with the ACHP's regulations, providing citizens, state and local governments, and tribal nations a voice in federal planning and decision-making. In 2007, the Congress gave the ACHP a permanent appropriations authorization. In 2009, it entrusted the ACHP with additional program responsibilities with regard to designating Preserve America Communities and consulting with the Secretary of the Interior to provide grants to those communities. This legislation codified the first government-wide, White House-led historic preservation initiative, which had been created and managed by the ACHP.

The ACHP's advisory duties have similarly become more impactful. Fulfilling its initial 1966 legislative charge to advise the President and the Congress on historic preservation matters, the ACHP has assumed an increasingly important role in shaping government policy affecting the nation's patrimony. As the sole federal agency with the exclusive mission of promoting historic preservation, ACHP input is regularly sought by Administration leadership on issues of national importance. The ACHP is a standing member of cabinet-level councils and committees dealing with such subjects as infrastructure development, climate change adaptation, and tribal affairs. In 2003, the President issued the Preserve America Executive Order, drafted by the ACHP, to improve the stewardship of federal historic properties. It directed the ACHP to regularly assess how federal agencies manage their historic properties and make recommendations triennially to the President for improvement.

While the ACHP has assumed an active role in the formulation of national policy and the implementation of critical federal programs, its leadership structure remains unchanged since 1966. The head of the agency, the ACHP Chair, is a part-time presidential appointee. Day-to-day operations of the ACHP are entrusted to an executive director, designated in the original NHPA to be the Director of the NPS. In

1976, when the Congress made the ACHP an independent agency with its own staff, it made the executive director an ACHP career employee. The position is now in the career Senior Executive Service.

The existing arrangement presents the anomaly of an independent federal agency with important programmatic and policy formulation responsibilities being effectively led on a daily basis by a career employee supervised by a policy-level Chair who is part-time and often geographically remote. Lacking are the opportunities inherent in a full-time presidentially-appointed position, located in the Nation's capital, to participate on a regular basis as an equal member of Administration leadership. This diminishes the effectiveness of the ACHP as a voice in national policy deliberations and lessens the national role of historic preservation, contrary to the original intent of the Congress.

Several studies over the past decade have singled this out as a deficiency in the federal program structure. In 2006, a panel of preservation experts convened as part of the Preserve America Summit recommended consideration of a full-time Presidential appointee to lead the ACHP. Acting in response, ACHP and Department of the Interior leadership jointly convened an expert panel in 2009 to evaluate the structure of the federal historic preservation program. Its priority recommendation was that the ACHP should have a full-time chair appointed by the president, a recommendation subsequently endorsed by the ACHP membership. In 2011, a special "Federal Historic Preservation Program Task Force," comprised of leaders of the major national historic preservation organizations, conducted an extensive study of ways to increase the effectiveness of the federal historic preservation program. Among other things, it supported the earlier recommendation for a full-time ACHP chair. The ACHP membership unanimously endorsed the Task Force recommendations, echoing their prior action.

The ACHP also seeks to advance the interests of Native Americans by providing formal representation for the nation's Tribal Historic Preservation Officers (THPOs). In 1992, Congress amended the NHPA to authorize tribal historic preservation programs certified by the Secretary of the Interior and created THPOs, with functions that are parallel to those of State Historic Preservation Officers (SHPOs) within their respective jurisdictions. Like SHPOs, THPOs are responsible for coordinating preservation programs in accordance with federal standards and with federal matching grant support. Recognizing the importance of SHPOs in the national program, the Congress added the President of National Conference of SHPOs (NCSHPO), the SHPO national non-profit organization, as a member of the ACHP in 1980.

While the NHPA provides for a presidentially appointed Native American or Native Hawaiian member, there is no formal voice for THPOs, who are tribal government officials, on the ACHP. Given that the National Association of Tribal Historic Preservation Officers (NATHPO) is the THPO equivalent of NCSHPO, the ACHP invited the General Chairman of NATHPO to become an observer on the ACHP in 1998. The growing importance of THPOs in the program (there are currently 160 and eventually most of the 565 federally recognized Indian tribes could have certified THPOs) now justifies providing NATHPO with full membership on the ACHP, comparable to its state counterpart.

Simple administrative changes in the ACHP's authorizing legislation can achieve both of these objectives and continue the Congress' longstanding commitment to strengthening the program to preserve and enhance our irreplaceable heritage, a fitting action at the 50th anniversary of the NHPA in 2016.