

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



May 31, 2024

The Honorable Mike Johnson
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 Johnson and Minority Leader Jeffries:

The Advisory Council on Historic Preservation (ACHP) would like to take this opportunity to provide comments on the Building Chips in America Act (S. 2228/H.R. 4549), which would exempt various federally funded projects for the development and manufacturing of semiconductors from certain federal 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 S. 2228/H.R. 4549, since administrative options already are available to permit streamlining of Section 106 review.

The ACHP appreciates the importance of boosting American semiconductor research, development, and production as called for by the 2022 CHIPS and Science Act. 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. As a requirement of Section 106, federal agencies must assume responsibility for the consequences of such projects on historic properties and be publicly accountable for their decisions. The ACHP's regulations that implement Section 106 (36 C.F.R. Part 800) provide a variety of tools—known as program alternatives—to adapt and streamline the review process to the needs of agency programs, including semiconductor development.

Because of its successful track record in using its existing administrative authorities to fast-track critical agency reviews, the ACHP has consistently advised against the use of legislative exemptions, and Congress typically has agreed with such advice. The powerful tool of program alternatives simply negates the need for legislative exemptions from Section 106 review. Hence the ACHP urges removal of the provisions of S. 2228/H.R. 4549 that would exempt projects from Section 106 review.

The ACHP has already explored options with the Department of Commerce regarding how use of program alternatives could further streamline Section 106 review for semiconductor projects, and in lieu of a legislative exemption will reach out again on this matter. Likewise, the ACHP can assist in integrating review of projects under Section 106 and the National Environmental Policy Act (as recommended in joint guidance published by the ACHP and the Council on Environmental Quality), thus

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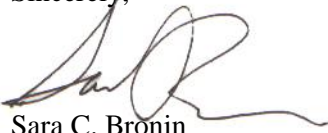
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further expediting environmental review of the projects addressed by S. 2228/H.R. 4549.

I wish to underscore that the efficiency of federal permitting processes depends not just on federal agencies, but on the capacity of State Historic Preservation Offices (SHPOs) and federally recognized Indian Tribes to provide meaningful input and engage in meaningful consultation. As we have previously communicated to Congress, Congress has a critical role to play through the level of funding provided to SHPOs and Tribes through the Historic Preservation Fund in the FY 2025 budget. The ACHP has also encouraged the Permitting Council and other federal agencies to consider ways in which they might help enhance SHPO and Tribal capacity.

Please feel free to contact me to discuss this matter; I would be happy to have the opportunity to meet with you or your staff. In addition, your staff may wish to follow up with Executive Director Reid Nelson at rnelson@achp.gov. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara C. Bronin', with a long horizontal flourish extending to the right.

Sara C. Bronin
Chair