

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 provide comments on the Harnessing Energy At Thermal Sources (HEATS) Act (H.R. 7409), which addresses permitting for accessing federal energy resources from nonfederal surface estate. Under specified circumstances, geothermal exploration and production activities 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 H.R. 7409, since administrative options already are available to permit streamlining of Section 106 review.

Section 106 of the National Historic Preservation Act 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. 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.

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. Hence the ACHP urges removal of the provisions of H.R. 7409 that would exempt projects from Section 106 review.

In lieu of a legislative exemption, the ACHP would be happy to explore options with relevant federal agencies regarding how the use of program alternatives could streamline Section 106 review for geothermal exploration and production activities addressed by the bill. Likewise, the ACHP can assist agencies in integrating review of projects under Section 106 and the National Environmental Policy Act

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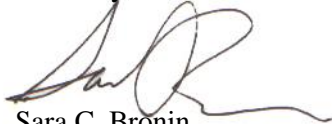
(as recommended in joint guidance published by the ACHP and the Council on Environmental Quality), thus further expediting environmental review of the projects addressed by H.R. 7409.

The 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 geothermal exploration and production activities addressed by H.R. 7409, 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.

I wish to underscore that the efficiency of federal permitting processes depends not just on federal agencies, but on the capacity of SHPOs and 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, DOI, 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 nelson@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