

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



May 31, 2024

The Honorable Chuck Schumer
Senate Majority Leader
U.S. Senate
Capitol Building, S-221
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
U.S. Senate
Capitol Building, S-230
Washington, DC 20510

Dear Majority Leader Schumer and Minority Leader McConnell:

The Advisory Council on Historic Preservation (ACHP) would like to provide comments on Section 20214 of the Limit, Save, Grow Act (H.R. 2811), 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. 2811, 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. 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 Section 20214 that would exempt projects from Section 106 review.

In lieu of a legislative exemption, the ACHP can 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 activities addressed by Section 20214. 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 ACHP and the Council on Environmental Quality), thus further expediting environmental review of the projects addressed by Section 20214.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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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 oil, gas, and geothermal exploration and production activities 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 Permitting 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 2025 budget.

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 stylized flourish extending to the right.

Sara C. Bronin
Chair