

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



December 5, 2024

The Honorable Debbie Stabenow, Chairwoman
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Russell Senate Office Building, SR-328A
Washington, DC 20510

The Honorable John Boozman, Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate
Russell Senate Office Building, SR-328A
Washington, DC 20510

Dear Chairwoman Stabenow and Ranking Member Boozman:

The Advisory Council on Historic Preservation (ACHP) would like to provide comments on Section 106(a) of the Fix Our Forests Act (H.R. 8790), which passed the House in September. This section addresses emergency fire management, including environmental review of fire management projects under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. §306108). Under Section 106 of the NHPA, federal agencies must consider the effects of projects, carried out by them or subject to their assistance or approval, on historic properties and be publicly accountable for their decisions on how to avoid or minimize any adverse effects. The ACHP is the independent federal agency charged with overseeing this process through administration of implementing regulations (36 CFR Part 800). The NHPA also tasks the ACHP with advising the President and Congress on historic preservation matters.

In this capacity, the ACHP urges removal of Section 106(a)(3)(A)(iv) of the Fix Our Forests Act, which would codify the emergency procedures of 36 CFR Section 800.12 in lieu of the standard review process under Section 106 of the NHPA for forest management projects in high priority fire management projects without invoking emergency provisions that may result in irreparable and unnecessary harm to historic properties.

The emergency provisions of Section 800.12 were designed to be used only short-term for discrete emergency situations, not routinely for an extended period of time as envisioned in H.R. 8790. Section 800.12 can be invoked by federal agencies when an emergency is declared by the President or leaders of Tribal, state, or local governments. The regulation encourages federal agencies to act proactively with the ACHP to put in place procedures to address dealing with historic properties in emergency situations. Absent this, agencies are to notify the ACHP, State Historic Preservation Officers, and any Indian Tribe or Native Hawaiian Organization that may attach religious and cultural significance to historic properties likely to be affected and provide them an opportunity to comment on emergency projects within seven days, or less, if circumstances warrant. This highly compressed process normally may only be used for 30 days in the immediate aftermath of an emergency (although agencies may request an extension). If applied as envisioned in H.R. 8790, large numbers of historic properties in multiple states affected by forest management projects may receive only cursory consideration with little public input or Tribal consultation for seven years.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

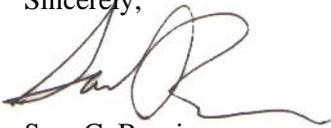
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Although the need to expeditiously address risks to forests, particularly from wildfire, is pressing, the seven-year time frame proposed in the bill suggests that the opportunity exists to address historic properties more comprehensively and thoroughly. 36 CFR Part 800 provides a variety of tools—known as program alternatives—to adapt and streamline the review process to the needs of agency programs. Some program alternatives already exist for forest management, such as programmatic agreements for particular Forest Service regions or forests. Maximizing use of program alternatives would facilitate projects in high-risk areas and include measures to expedite reviews in certain circumstances while ensuring historic properties still receive adequate consideration.

The ACHP stands ready to work with relevant federal agencies to develop program alternatives tailoring reviews under Section 106 of the NHPA to forest management activities in high-risk areas and to enhance such program alternatives where they already exist. Hence, the ACHP urges removal of Section 106(a)(3)(A)(iv) of H.R. 8790 as unnecessary and detrimental to preservation of historic properties in federally managed forests.

Please feel free to contact me to discuss this matter as consideration of the bill proceeds. In addition, your staff may wish to follow up with ACHP 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

cc:
Senate Energy and Natural Resources Committee
House Natural Resources Committee