



**National Trust for
Historic Preservation**
Save the past. Enrich the future.

March 28, 2023

United States House of Representatives
U.S. Capitol
Washington, D.C. 20515

United States Senate
U.S. Capitol
Washington, D.C. 20510

Dear Members of Congress:

On behalf of the organizations listed below, which are dedicated to the protection and preservation of our nation's historic and cultural resources, we wish to express our serious concerns with recent legislative proposals addressing federal permitting, including the Lower Energy Costs Act (H.R. 1). While we support efforts to improve the regulatory process, these efforts must not come at the expense of our nation's heritage.

For more than half a century, the nation has benefited from the established legal principle that our historic and cultural assets should be preserved for the benefit of the public. Our organizations endeavor to ensure that the heritage we protect is reflective of all Americans and the diversity of the American experience. We deeply value the many ways our government aspires to tell the full history of our nation in the historic places that it preserves and protects, through both funding and established law.

On occasion, however, we are compelled to remind policymakers not to lose sight of the value of our heritage as we invest in our future. To be sure, balancing historic and cultural protections with modern social objectives is not always simple, but it is important to remember that historic and cultural assets are irreplaceable. To lose the historic places and cultural assets that tell our collective story diminishes us all. When faced with such stark consequences, the government must err on the side of prolonging the existence of the irreplaceable. The benefit of time affords society the opportunity for sharper perspective and clarity about that which we value and define as significant. Furthermore, what we preserve and how we preserve it strengthens our country because it is a unifying force that tangibly demonstrates respect for our collective traditions, accomplishments, and heritage.

We are fortunate to have laws that support this appropriate course for the nation. The National Historic Preservation Act (NHPA) emphasizes the importance of protecting cultural and historic resources so that future generations have an opportunity to appreciate our rich heritage. The National Environmental Policy Act (NEPA) similarly adheres to the continuing responsibility of the federal government to use all practicable means to preserve important historic, cultural, and natural resources. These laws play a critical role in giving our communities, including those that have been historically underrepresented, a voice to help shape and refine federally permitted projects and to assist in avoiding and minimizing their adverse impacts.

The NHPA and NEPA were enacted within four years of one another and are foundational aspects of federal oversight of our nation's historic and cultural resources. The Council on Environmental Quality's (CEQ's) regulations for implementing NEPA encourage integration of the NEPA process with other planning and environmental reviews, such as Section 106 of NHPA, which requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve throughout the country.¹ The regulations that implement Section 106 (36 C.F.R. Part 800) provide a versatile array of streamlining tools, including providing for the development of program alternatives like nationwide programmatic agreements and program comments that can help tailor Section 106 compliance to agency program needs. Such program alternatives are preferable to legislative exemptions from the NHPA because they ensure consideration of project impacts on historic properties while still streamlining consultation requirements. This is a win-win scenario that can address concerns motivating legislative provisions for streamlining. Anything short of the full reach of our bedrock preservation laws risks repeating the mistakes of our past and the irretrievable loss of our cultural heritage.

Specifically, we have grave concerns about provisions of H.R. 1 that undermine the core principles of NEPA and NHPA and would eliminate vital protections for historic and cultural resources if the proposed changes were enacted. For example, many oil and gas drilling projects would be completely exempted from compliance with NEPA and the NHPA. Other provisions would set arbitrary time limits, mandating additional projects irrespective of their viability, and accelerating time-tables for federal review would overwhelm an already underfunded and understaffed workforce and compromise the very protections which these critical laws were intended to provide. While changes and limitations to supporting documentation for federal reviews may appear on its face to create permitting efficiencies, such an approach risks longer-term unintended consequences by limiting public disclosure and evaluation of adverse impacts. The result would put our nation's communities, and their cultural and historic resources, at risk. Without the benefit of careful review and consideration of these unprecedented changes by Congress, we are concerned that the proposed federal permitting provisions will erode government accountability and unreasonably limit public participation.

In our view, the federal permitting process could be dramatically improved and streamlined through greater federal investments in staffing and in modernizing the way historic and cultural resources are documented and made available to the public. State and Tribal Historic Preservation Officers (SHPOs and THPOs) are charged with completing required project reviews, but are inadequately funded and staffed to do so. Providing them the necessary resources is the appropriate solution to improve and expedite reviews, not changing the rules to circumvent or eliminate the requirements. Support for nationwide survey and digitization of historic resources through the Historic Preservation Fund would improve public access to information and allow for earlier and more efficient review of federal undertakings under the NHPA.

¹ [NEPA and NHPA, A Handbook for Integrating NEPA and Section 106](https://www.achp.gov/integrating_nepa_106), Council on Environmental Quality, Executive Office of the President, and Advisory Council on Historic Preservation. (2013) (available at https://www.achp.gov/integrating_nepa_106).

We respectfully urge opposition to H.R. 1 due to legislative provisions that weaken the processes our nation employs to protect its historic and cultural resources. When historic places and cultural resources are gone, they are gone forever. We have an opportunity to effectively protect this heritage and advance projects with greater efficiency by increasing investment in the preservation workforce and utilizing new technologies, while continuing to maintain public participation. We owe this to our past and to our future.

Our organizations welcome the opportunity to collaborate with you on viable proposals and innovative solutions for federal permitting processes that continue to sustain vital preservation laws that preserve and protect our shared heritage.

Sincerely,

National Trust for Historic Preservation

American Anthropological Association
American Cultural Resources Association
National Alliance of Preservation Commissions
National Association of Tribal Historic Preservation Officers
National Conference of State Historic Preservation Officers
Main Street America
Society for American Archaeology
Preservation Action