



## June 2023 Government and International Government Affairs Update

Dear SAA Member,

The debt limit suspension bill that passed into law late last month laid the groundwork for a challenging budget and appropriations environment for historic preservation over the next two years. Under the agreement, spending on non-defense discretionary accounts (which includes cultural resources preservation programs) will total \$704 billion in the upcoming fiscal year, FY 2024. This will represent essentially flat spending levels. In FY 2025, the total amount will increase, but only to \$711 billion, well below the current rate of inflation.

Over the past several budget cycles, many heritage protection programs saw substantial increases in funding, including the Historic Preservation Fund (HPF). If overall federal non-defense discretionary spending is to remain flat in nominal terms, then the preservation community is going to have to work hard to maintain the gains we've achieved. Our appropriations testimony focused on the need for robust resources for the program created under the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and other preservation statutes, if they are to function properly to preserve and protect our nation's irreplaceable historic and archaeological treasures.

However, we need to do more. It is imperative that our archaeologist members make their voices heard as well. As David explains below, reauthorizing the Historic Preservation Fund (HPF) is an important goal. If you haven't already, why not take a few minutes to go to our [Take Action](#) portal and send a letter of support for the HPF reauthorization bill to your member of Congress? It's easy—there is a letter you can use as is or modify, and appropriate legislators for your district are preloaded. All you have to do is click. Sending a “take action” letter will let Capitol Hill know that archaeologists are watching this issue. It will also build up support for the measure and help move it through

the legislative process.

Many thanks for your membership and involvement!

*Dan Sandweiss*  
*President*

## Domestic Issues

The SAA joined with nearly 40 other national, state, and local preservation groups on a [letter](#) of support to the sponsors of H.R. 3350, the Historic Preservation Fund Reauthorization Act of 2023. The National Historic Preservation Act (NHPA) is the cornerstone of the nation's heritage protection system. Without the Section 106 reviews carried out under the NHPA, most of the cultural and historic preservation activities that go on in the United States today simply would not take place. The HPF is the mechanism by which crucial federal support for State and Tribal Historic Preservation Offices is allocated. If those offices don't have the resources they need, then the Section 106 process cannot function properly, and our irreplaceable historic resources—including the archaeological record—will not receive the level of protection the law requires. This is why reauthorization of the HPF is one of the SAA's top priorities for 2023, and we will continue to press Congress to approve H.R. 3350 before the fall recess.

*David Lindsay*  
*Manager, Government Affairs*

## Federal Legislation

### **H.R. 1—Lower Energy Costs Act of 2023** **Sponsor—Rep. Scalise (R-LA)**

Status—passed the House on March 30

This bill is the House Republicans' marker on reforming the permitting process for energy and transportation infrastructure projects. It would require Interior to resume quarterly lease sales on federal lands and a minimum of four annual offshore lease sales, require publication of 2023–2028 offshore oil and gas lease sales plans, end the existing moratorium on new coal leasing, codify the Trump administration's NEPA regulatory changes, end NEPA compliance for "non-major" federal actions (geotechnical investigations, transmission infrastructure upgrades, off-road vehicle use in existing rights-of-way, meteorological towers, geothermal exploratory wells, etc.), limit NEPA environmental reviews for lease sales to impacts directly related to extraction, enforce a 120-day deadline to file a claim on any final agency action subject to NEPA, end Section 106 compliance for activities on lands where the federal government owns less than 50% of the subsurface mineral rights, and set NEPA review deadlines at one year for environmental assessments and two years for environmental impact statements. On March 28 the SAA joined a [letter](#) by the National Trust that outlined our opposition to the bill and

suggested alternative approaches to improve the federal permitting process. While some streamlining provisions were included in the debt limit suspension bill, further action on permitting is possible in this Congress, and the SAA will continue its work to educate Members of Congress on historic preservation's role in this important issue.

**H.R. 178—Public Land Renewable Energy Development Act of 2023**  
**Sponsor—Rep. Mike Levin (D-CA)**

Status—pending before the House Natural Resources and Agriculture Committees

The measure would require the Secretary of the Interior to establish renewable energy priority areas on public lands and update the Final Programmatic Environmental Impact Statements (PEIS) for geothermal (issued October 2008), solar (issued July 2012), and wind (issued July 2005) to include those priority areas. The department would be required to coordinate with state, tribal, and local governments, as well as industry stakeholders, to ensure that priority areas are economically viable and that the undertakings would minimize impacts on habitat, recreation, cultural resources, and other uses. This bill was approved by the House Natural Resources committee in the previous Congress.

**H.R. 356—Unleash American Energy Act of 2023**  
**Sponsor—Rep. Jerry Carl (R-AL)**

Status—pending before the House Natural Resources Committee

This bill is a reintroduction of a similar measure from the previous Congress. It would “require a minimum of two oil and gas lease sales a year in the Gulf of Mexico and in the Alaska Region of the Outer Continental Shelf.” It would also prohibit any administration from imposing future moratoriums or delays on offshore oil and gas leasing.

**H.R. 923—To prohibit the President from issuing moratoria on leasing and permitting energy and minerals on certain Federal land**  
**Sponsor—Rep. Harriett Hageman (R-WY)**

Status—pending before the House Natural Resources Committee

Like H.R. 356 above, this measure would direct the executive branch to further develop domestic energy resources, in this case by preventing an administration from placing a moratorium on oil, gas, and mineral extraction activities on federal land.

**H.R. 2167—To limit funds for the Historic Preservation Fund for fiscal year 2024**

**Sponsor—Rep. Andy Biggs (R-AZ)**

Status—pending before the House Natural Resources Committee

This legislation would cap spending from the HPF in the fiscal year beginning October 1, 2023, to \$102,660,000. Rep. Biggs has introduced hundreds of similar bills to reduce or eliminate spending in federal programs as part of an effort to bring the budget situation under control. The SAA will oppose this measure and similar bills introduced by Rep. Biggs should they move forward in the Natural Resources Committee.

## **H.R. 3350—The Historic Preservation Fund Reauthorization Act** **Sponsor—Rep. Michael Turner (R-OH)**

Status—pending before the House Natural Resources Committee

This legislation would extend authorization for the Historic Preservation Fund (HPF) for 10 years and increase the annual funding limit to \$250 million.

Authorization for the HPF is currently set to expire on September 30. The SAA will work to support this measure in the Congress to build support for an extension of the HPF's authorization. Go to our [Take Action](#) portal to send a support letter to your member of Congress.

## **S. 1399—Building American Energy Security Act of 2023** **Sponsor—Sen. Joe Manchin (D-WV)**

Status—pending before the Senate Energy and Natural Resources Committee

The bill is nearly identical to the measure that Manchin sponsored in the previous Congress. Some of its provisions include extending the “one federal decision” system for public works to energy and minerals projects; requiring a single interagency environmental review overseen by one lead agency; establishing page limits on environmental review documents; setting 150-day statutes of limitations for court challenges; and requiring the president to designate and periodically update a list of at least 25 high-priority energy infrastructure projects and requiring that list to be balanced in terms of project types such as critical minerals; nuclear; hydrogen; fossil fuels; electric transmission; renewables; and carbon capture, sequestration, storage, and removal.

## **Agency Actions**

The National Park Service (NPS) is proposing to create a Nationwide Programmatic Agreement to build “an efficient and consistent Section 106 process for its cultural resources financial assistance undertakings.” The NPS will host a series of virtual listening sessions with stakeholders. The SAA will attend a listening session and submit comments, which are due by August 17. You can read more about the issue [here](#).

On June 2, the Department of the Interior announced the withdrawal of public lands within a 10-mile radius of the Chaco Culture National Historical Park from new oil and gas leasing and mining claims. The new public land order, which you can read [here](#), extends the withdrawal for the next 20 years. The SAA and other preservation organizations, along with numerous tribal groups, strongly support the protection of Chaco culture heritage resources.

On June 22, the SAA submitted comments on the Bureau of Land Management's proposed rule regarding conservation and landscape health for the lands under its jurisdiction. Landscape approaches to natural and cultural resource preservation are issues that the SAA has supported for years. You can read our comments in the Insights and Analysis section below.

On June 20, the Advisory Council on Historic Preservation (ACHP) announced the adoption of a new statement on Climate Change and Historic Preservation Policy to “acknowledge the important connections between climate change and historic properties and urge federal and non-federal stakeholders to take steps to address these impacts at all levels of planning.” You can read more [here](#).

On June 13, the ACHP announced that it is seeking public input on the “application and interpretation of the Secretary of the Interior’s Standards for the Treatment of Historic Properties.” Comments are due by July 20, 2023. The SAA will submit its input. You can read more [here](#).

## International Issues

On June 5, SAA members Dr. Anne [Underhill](#) and Dr. Rowan [Flad](#) each presented testimony to the State Department’s Cultural Property Advisory Committee in support of the proposed renewal of the Memorandum of Understanding with the People’s Republic of China for the protection of that nation’s archaeological resources. This is a difficult issue given the ongoing situation in the Xinjiang region of mainland China, but we greatly appreciate Drs. Underhill and Flad lending their time and expertise to the protection of the global archaeological record.

## In The States

The Ohio legislature is in the final stages of approving a budget for the upcoming fiscal year. Once enacted, the legislation will authorize the creation of a six acre inter-tribal cemetery to lay to rest 7167 Native American ancestors currently in the possession of the Ohio History Connection. The cemetery will be in an undisclosed location. Once this law goes into effect, however, Ohio will still be one of three states without a process for handling the discovery of unmarked human remains on private property.

## In The Courts

On June 27, the SAA, AIA, and AAA filed a reply to the government’s arguments against our group’s intervention in the lawsuit over the Bears Ears and Grand Staircase-Escalante National Monuments. In the filing, the coalition argues that our members’ distinct professional interests in ensuring that archaeological best practices guide the interpretation and application of the Antiquities Act and that our participation as intervenors will better speak to the protection of archaeological resources than the defendants could on their own. The court has not set a time frame for issuing a final ruling on this question.

## Insight and Analysis

*The following are the comments submitted by the SAA on the BLM’s proposed rule concerning the improvement of the health and resilience of resources on a*

*landscape basis, and call for greater specification of cultural resources in the final rule.*

June 22, 2023

U.S. Department of the Interior  
Director (630)  
Bureau of Land Management  
1849 C St. NW, Room 5646  
Washington, DC 20240  
Attention: RIN 1004-AE92

Dear Ms. Stephanie Miller,

The Society for American Archaeology (SAA) is pleased to provide the following comments on the proposed Bureau of Land Management (BLM) revisions to regulations at 43 C.F.R. § 1610.7-2 on protecting Areas of Critical Environmental Concern (ACECs) and the creation of new regulations on “Ecosystem Resilience” at 43 C.F.R. Part 6100. We support the intent of the rule “to protect intact landscapes, restore degraded habitat, and make wise management decisions based on science and data.” The SAA also strongly concurs with the draft’s clarification that conservation is a “use” within the BLM’s multiple-use framework. Nevertheless, the document needs to more clearly specify and delineate the role of cultural resources and sacred sites protection.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 5,500 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

The following are the SAA’s comments on the proposed rule:

I. Executive Summary: “ACECs are the principal designations for protecting important natural, cultural, and scenic resources, and establish a more comprehensive framework for the BLM to identify, evaluate, and consider special management attention for ACECs in land use planning.” The SAA strongly supports the recognition of cultural resources and sacred sites as ACECs.

III. Background

F. Related Executive and Secretarial Direction: The proposed rule cites the Secretary’s Order 3289: Addressing the Impacts of Climate Change on America’s Water, Land, and Other Natural and Cultural Resources; Secretary’s



Order 3403: Joint Secretary’s Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters; and Executive Order (EO) 14072, Strengthening the Nation’s Forests, Communities, and Local Economies. Since cultural resources are included in ACECs, we suggest adding to the above list EO 11593—Protection and Enhancement of the Cultural Environment, EO 13175—Consultation Coordination with Indian Tribal Governments, the American Indian Religious Freedom Act (grants access to tribes to any sacred landscapes), EO 12898—Executive Order on Environmental Justice, and EO 13007—Indian Sacred Sites, as they also apply. EO 11593, Section 2 requires federal agencies to “(a)...locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their [agency] jurisdiction or control that appear to qualify for listing on the National Register of Historic Places.” The SAA believes that including cultural resources in ACECs would help in the identification and nomination of historic properties and strongly suggests doing so. EO 13007 requires federal agencies that manage federal land to “(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.” The SAA proposes that BLM use ACECs to better manage protected sites sacred to the Native American community, which would have to be done in consultation with tribes.

Section 110 of the National Historic Preservation Act (NHPA), among other things, requires each federal agency to establish a preservation program for the identification, evaluation, and nomination to the National Register and protection of historic properties and use of these properties in carrying out its responsibilities. In addition, Section 110 requires that historic properties under the jurisdiction or control of an agency be managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values, and agency preservation-related activities are to be carried out in consultation with other federal, state, and local agencies; Indian tribes; Native Hawaiian organizations; and the private sector. We believe that including historic properties in ACECs would satisfy Section 110’s mandate to manage and maintain historic properties. Further, if it is within the scope of the proposed rule to mention statutory authorities, the SAA suggests including the NHPA, as well as the Archaeological Resources Protection Act.

V. Procedural Matters-New Information Collection Requirements—National Environmental Policy Act: The BLM intends to apply a Departmental Categorical Exclusion (CX) because it considers that the environmental effects of the Part 6100 regulations “are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” Yet Section 6102.41—Termination and Suspension of Conservation Leases—addresses those instances under which a lease may be terminated, including “non-compliance with applicable law, regulations, or term and conditions of the lease or failure of the holder to use the lease for the purpose for which it was authorized.” These conditions suggest that failure to comply could have a significant environmental impact.

We suggest that the BLM reevaluate the use of CXs for actions under Part 6100, especially with respect to conservation leases, and possibly develop a programmatic Environmental Assessment to determine whether establishment of the conservation leases could have significant environmental impacts.

Section 1610.7-2: ACEC designations are for public lands where special management is required to “*protect important natural, cultural, and scenic resources*” (emphasis added). However, the emphasis throughout Part 6100—Ecosystem Resilience—is on ecosystems; there is no mention of cultural resources or cultural landscapes. The proposed rule must include cultural resources and sacred sites in this section.

On a larger spectrum, the relationship between Section 1610 and Part 6100 in the proposed rule is unclear. The summary at the beginning of the announcement focuses on ACECs, while the Executive Summary addresses both, which suggests there is a direct relationship. Whereas the focus of 1610 is on ACECs, there is no mention of them in Part 6100. The conflation of both in one public notice suggests that there is such a relationship. This needs to be clarified. Otherwise, the SAA does not understand why the proposed rule includes both, since they seem to address different actions and programs.

We appreciate the opportunity to provide these comments and look forward to working with the BLM in the weeks ahead.

Sincerely,

Daniel H. Sandweiss, PhD, RPA  
President

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