Congress of the United States
Washington, DC 20515

October 26, 2023

Senator Jack Reed
Chairman
Senate Armed Services Committee
Washington, D.C. 20510

Congressman Mike Rogers
Chairman
House Armed Services Committee
Washington, D.C. 20515

Senator Roger Wicker
Ranking Member
Senate Armed Services Committee
Washington, D.C. 20510

Congressman Adam Smith
Ranking Member
House Armed Services Committee
Washington, D.C. 20515

Dear Chairman Reed, Chairman Rogers, Ranking Member Wicker, and Ranking Member Smith:

As you finalize the Fiscal Year 2024 (FY24) National Defense Authorization Act (NDAA), we request that you preserve Section 1090G of the Senate-passed bill which is based on the bipartisan and bicameral Building Chips in America Act (S. 2228/H.R. 4549).[1] This provision streamlines National Environmental Policy Act (NEPA) review requirements for semiconductor manufacturing projects related to the CHIPS and Science Act of 2022. To succeed at reshoring critical semiconductor supply chains, we cannot impose years-long delays to semiconductor projects important to national and economic security.

Historically, NEPA reviews apply to projects that receive a significant portion of federal funding, giving the Federal government sufficient control over the project's outcome. This is not the case for the CHIPS program. The Commerce Department expects grants to comprise a minimal share of total project cost, between 5-15%, to spur additional private investment in the United States. Importantly, semiconductor manufacturing facilities have been privately constructed in the United States for decades and have not been required to undergo NEPA reviews.

The Commerce Department will require a NEPA review by considering CHIPS Act projects to be "major federal actions." This could include projects that have already received all environmental permits required under federal and state law,[2] and have begun construction. This could halt or delay commencement of new projects, impacting the United States' ability to bolster its national security interests, economic growth, competitiveness, and technological leadership.

[1] A modified version of the Building Chips in America Act was included in the Senate-version of the National Defense Authorization Act (S. 2226) as a part of a manager's amendment adopted on the floor of the Senate by a vote of 94-3. *See:* https://www.senate.gov/legislative/LIS/roll_call_votes/vote1181/vote_118_1_00211.htm

[2] Like any other manufacturing facility constructed in the United States, construction on a new semiconductor manufacturing facility must comply with all federal, state, and local permitting and environmental protection laws – including the federal Clean Air Act, the Clean Water Act, and the Endangered Species Act.

To address this challenge, Section 1090G of the Senate-passed NDAA and the Building Chips in America Act would clarify the scope of NEPA reviews required under the CHIPS Act. Under this amendment, a limited scope of projects receiving funding under the CHIPS Act would be deemed as non-major federal actions. These include projects that have already begun construction within the next year; projects for which federal funding represents a minimal amount (10% or less) of total capital investment; and projects that will simply expand or modernize an existing semiconductor facility. Furthermore, Section 1090G of the Senate-passed version ensures all states are equally attractive for semiconductor investments.

As Secretary of Commerce Gina Raimondo recently testified to the Senate Committee on Commerce, Science, and Transportation: "These are national security imperative projects. […] Environmental concerns matter. We are not in any way suggesting we should do anything that hurts the environment or is unsustainable. That being said, we do need to […] streamline the process, speed the process, make the process more efficient and user friendly. […] But without the [amendment] it's very difficult."[3]

Interruptions and delays to semiconductor manufacturing projects would undermine the goals of the CHIPS Act and exacerbate risks to our economic and national security, without providing additional benefits for environmental protection. Therefore, we urge you to retain Section 1090G of S. 2226 in the final FY24 NDAA.

Thank you for your consideration of this request and for your ongoing leadership.

Sincerely,

Mark Kelly
United States Senator

Jen A. Riggans
Member of Congress

Ted Cruz
United States Senator

Michael T. McCaul
Member of Congress

Doris Matsui
Member of Congress

Scott H. Peters
Member of Congress

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Tom Cole
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Jeffrey A. Merkley
United States Senator

Cc:
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Senator Chuck Schumer, Senate Majority Leader
Senator Mitch McConnell, Senate Minority Leader
Congressman Hakeem Jeffries, House Minority Leader