October 9, 2026

Senator John Thune
Republican Leader
U.S. Senate
511 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Chuck Schumer
Democratic Leader
U.S. Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Senator Mike Lee
Chairman
Senate Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Martin Heinrich
Ranking Member
Senate Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Shelley Moore Capito
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Sheldon Whitehouse
Ranking Member
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Leaders Thune and Schumer, and Senators Lee, Capito, Heinrich, and Whitehouse,

On behalf of the undersigned Tribal organizations, we write to express our strong opposition to Title III of the Bipartisan American Affordability and Jobs Act (BAAJA), concerning changes to the Section 106 review process of the National Historic Preservation Act. While we object to other provisions in BAAJA, this letter will focus on Title III's proposed changes, which are in deep conflict with federal trust and treaty obligations to engage sovereign Tribal Nations in government-to-government Tribal consultation and to protect our irreplaceable cultural heritage. They fail to respect our inherent sovereignty, self-determination, and Indigenous Knowledge. **We urge the immediate rescission of this language from the proposal and ask that you instead consult with Tribal Nations on permitting reform that will bring Tribal Nations to the federal decision-making table earlier so that together we may guard against the further destruction of our sacred sites and cultural resources.**

The reviews required under Section 106 are vital to the continuity of Native cultures, the practice of our spiritual traditions, and the protection of our sacred sites from irreparable degradation and ruin. After centuries of federal action designed to strip us of these fundamental rights,[1] the Section 106 review process, though imperfectly implemented, provides Tribal Nations with a mechanism and resources to help the federal government make better decisions that avoid the ongoing loss of our identities, ceremonies, and

[1] Federal Indian law is and always has been a reflection of international norms, recognized by the very first U.S. Supreme Court cases in the *Marshall Trilogy*. As international norms evolve, including to better recognize Indigenous peoples' cultural rights, *see* Articles 11 and 12, U.N. Declaration on the Rights of Indigenous Peoples, federal Indian law must not be left behind.

Ancestors in the name of "progress." Now, with the introduction of BAAJA, the federal government is proposing to facilitate the demolition of our heritage, a regressive action that ignores the progress made in the Tribal-U.S. relationship during the self-determination era and returns us to a place of U.S.-sanctioned encroachment and dispossession.

Permitting reform does not involve a binary choice between the pursuit of infrastructure projects and the protection of sacred sites through the Section 106 review process. Together, we can craft federal policy that accomplishes both aims. When Tribal Nations are brought into federal decision making at its earliest stages, we can help guide project design to avoid irreparable harm and legal violations—allowing for faster and more durable decisions. Indeed, without our Tribal experts, there is no way for a federal agency or project proponent—even with the help of archaeologists—to accurately identify our historic properties and the effects we may feel on them. We must be part of the solution, not pushed away from the table.

While we acknowledge that Title III contains some positive provisions, including the codification of Tribal consultation and an increase in the Historic Preservation Fund, these are far overshadowed by provisions that would undermine our ability to participate in federal decision making and protect against cultural loss, including:

- **Narrowed definitions and increased exemptions limiting scope of Section 106:** By limiting and creating exemptions for important definitions, such as "undertaking," "effect," and "area of potential effects," the bill greatly reduces when the Section 106 review process is triggered, thereby reducing opportunities for Tribal Nations to be involved in federal decision making to assist in cultural reviews. Each of these changes may affect our ability to even have knowledge that an infrastructure project is occurring, all but guaranteeing that construction through sacred places will proceed without the involvement of Tribal Nations.

- **Reduced Tribal Nation participation and increased federal deference:** Under the bill, Tribal Nations need not be consulted as federal agencies designate an area of potential effect, identify historic properties, and assess potential effects—requiring only that federal agencies consult after they issue a report containing their pre-determined conclusions. The federal agency could be the *sole* entity in determining whether a Tribal cultural property exists, despite Tribal Nations, our designated officials, and cultural experts being the only entities qualified to make these determinations on our behalf. Moreover, the bill would give federal agencies the authority to determine that "other considerations" outweigh adverse effects on our sacred places.

- **Inappropriate federal oversight of Tribal Historic Preservation Officers:** The capacity issues facing Tribal Historic Preservation Officers (THPOs) are well known and can be attributed to chronic federal underfunding and neglect. However, in response to a problem of the federal government's own making, this bill proposes to penalize Tribal Nations, contravening policies of self-determination and self-governance. For example, under this bill, missed review deadlines will result in the loss of THPO status and funding, as well as the deeply paternalistic assumption of THPO functions by the Department of the Interior, which is wholly unqualified and lacks the necessary expertise to perform these sacred duties.

- **Limitations on judicial review:** As the leadership of the Committees of Jurisdiction over permitting processes, you are well aware of federal agency shortcomings in the Section 106 process as it currently exists. These shortcomings often result in failures to properly consult with Tribal Nations and to act upon our guidance. In the case of these failures, Tribal Nations are

frequently left without recourse or options beyond the judicial system, if we are to protect our heritage and seat at the table. We do not seek to engage in litigation, nor are these 'nuisance' lawsuits. Any litigation represents our last attempt at preserving our cultural identities. Instead of acknowledging and mitigating federal failures, this bill attempts to shut Tribal Nations out of the court room. Most glaringly, it provides certainty in the face of federal ineptitude and nearly eliminates any real remedies available to Tribal Nations by stipulating remand without vacatur as a baseline, thus allowing projects to proceed while remand to address inadequate Section 106 review is ongoing. This bill also institutes a 150-day statute of limitations, attempts to limit standing, forces a Tribal Nation to assert substantive objections to a federal agency's Section 106 report within a mere 30 days of receipt, and creates additional burdens for litigating Tribal Nations.

Tribal Nations should not be forced to bear the brunt of these cultural and spiritual harms so the nation can further develop and transport its energy resources. We have already sacrificed the majority of our lands and natural resources—oftentimes through force or coercion—upon which the United States has become the world power it is today.

As Indian Country has noted repeatedly, early, robust, and meaningful consultation with Tribal Nations (that includes mitigation and avoidance requirements) and meaningful increases in funding owed for Tribal historic preservation will result in faster infrastructure deployment and greater certainty in the permitting process. While we strongly support robust and strengthened national infrastructure, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

It is with this in mind that we register our strong opposition to the Bipartisan American Affordability and Jobs Act as written. We urge you, in the strongest possible terms, to withdraw this language and work in collaboration with Indian Country on a more honorable alternative.

Sincerely,

Affiliated Tribes of Northwest Indians
Association on American Indian Affairs
Midwest Alliance of Sovereign Tribes
National Association of Tribal Historic Preservation Officers
National Congress of American Indians
Native American Rights Fund
Rocky Mountain Tribal Leaders Council
Tribal Self-Governance
United South and Eastern Tribes Sovereignty Protection Fund