UPDATED TALKING POINTS ON BAAJA (S. 5653)

Congressional Call: Delay the Bill

- As you may know, the **Bipartisan American Affordability and Jobs Act of 2026, S. 5653,** would rewrite major parts of the National Historic Preservation Act's **Section 106** process. While we have concerns with other parts of this bill, too, today I want to focus on what these Section 106 changes mean for Tribal sovereignty and our sacred places.

- **We want to be very clear: This is not a good bill with a few bad provisions that Congress can fix through amendments. This is a fundamentally bad bill that Congress should abandon.** There is a difference between striking out the most harmful language through amendments and trying to turn a bad bill into a good one through amendments. This bill, as written, cannot be made into a good bill, in part because Tribal Nations were never part of the process. The problems run throughout the legislation, and a handful of amendments will not cure them. **Congress should not try to patch this bill together and call it a compromise.** These issues deserve to be considered anew, with Tribal Nations at the table from the beginning.

- **Our ask is that Congress delay considering this bill.** Tribal Nations were not meaningfully consulted when this bill was developed, despite the fact that the Section 106 Title and other provisions in this bill directly affect our rights. Congress should not rush through changes of this magnitude without us. **We ask that this bill be held until the next Congress has had the time to engage in meaningful government-to-government Tribal consultation on permitting reform.**

- **Tribal Nations are sovereign governments, not stakeholders.** Through the taking of our lands and resources, the United States incurred debt-based trust and treaty obligations, including protecting our seat at the federal decision-making table and avoiding harm to our sacred places and cultural resources. Consultation is not a courtesy Congress can offer *after* the decisions have already been made. It is a legal obligation that must occur before taking actions that directly impact us.

- **Section 106 is a tool for bringing Tribal expertise to inform federal decision making.** It creates a process for Tribal experts to help agencies identify historic properties, consider how projects may harm them, and work through ways to avoid, minimize, or mitigate that harm. **It does not give Tribal Nations a veto right**, instead it is a chance for Tribal Nations to help the United States make better decisions before irreparable damage is done.

- **Our sacred places do not end at reservation boundaries, and harm does not end at a project's footprint.** Section 106 review is important for any instance where the federal government's decision might lead to harming a Tribal Nation's sacred places or cultural resources. Changes to a place's setting, views, sound, access, or surrounding landscape can interfere with cultural practices, even if a bulldozer never touches the place itself. This bill would narrow which federal actions, which places, and which effects agencies are required to consider through Section 106 review.

- **This bill would also weaken when Tribal Nations are able to participate.** Under this bill, an agency is not required to consult with us when identifying historic properties and drawing the review area, even though this is a critical early step in the process that can avoid great harm and delay down the road. Instead, required Tribal consultation only comes after the agency has written its own "Section 106 Report." Such a process is not the same as having us, and our knowledge, at the table while crucial decisions are being made.

- **Meaningful consultation requires more than taking our comments.** Federal officials need to sit down with us, hear our concerns, respond to those concerns, and show how they were considered in the final decision. We should not be asked to react to conclusions the agency has already reached about our own cultural places.

- **We are already doing this work with too few resources.** Tribal Historic Preservation Officers, or THPOs, face heavy workloads and short response periods. This bill would add federal oversight, threaten funding, and could even let federal agencies assume THPO functions—an affront to Tribal sovereignty—after a Tribal Nation has worked hard to establish and receive federal approval of its program.

- **And if an agency gets Section 106 review wrong, this bill would make meaningful court relief harder to obtain.** While courts could still find violations in the Section 106 process, this bill would make it so they are unable, on that claim alone, to stop the work being done while the agency corrects its review. You cannot undo the destruction of a burial place by fixing the paperwork afterward.

- If Congress will not delay the entire bill, then, at a minimum, it must remove Title III in its entirety from the text—including all the Section 106 changes. Section 106 reform should be considered separately, and only after meaningful government-to-government Tribal consultation informing any future changes. We are asking the United States to honor the obligations it already owes us.