NOTTAWASEPPI HURON
BAND OF THE POTAWATOMI
A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT

October 27, 2026

Elissa Slotkin
Senator
291 Russell Senate Office Building
United States Senate
Washington, DC 20510

Gary Peters
Senator
724 Hart Senate Office Building
United States Senate
Washington, DC 20510

Re: Significant Concerns with Title III of the Bipartisan American Affordability and Jobs Act

Dear Senators Elissa Slotkin and Gary Peters:

On behalf of the Nottawaseppi Huron Band of the Potawatomi (NHBP), I write to urge you to oppose S.5653, the *Bipartisan American Affordability and Jobs Act* (BAAJA) unless the bill is substantially revised. Specifically, NHBP opposes Title III of the BAAJA because it would make sweeping changes to the National Historic Preservation Act's (NHPA) Section 106 process. The NHPA has helped Tribal Nations throughout the country protect cultural resources and sacred sites for decades. NHBP supports responsible efforts to improve the federal permitting process. However, the current language of Title III threatens tribal sovereignty, weakens meaningful government-to-government consultation, and puts Tribal sacred places and other culturally significant resources at risk. NHBP is not alone in being greatly concerned with BAAJA's rewrite of the NHPA. The United Tribes of Michigan recently adopted the attached resolution urging the U.S. Senate to remove the NHPA provisions from the BAAJA and urging that any revisions be made through a federal notice and comment rulemaking process. We urge you to oppose the BAAJA unless the provisions revising the NHPA are removed or substantially revised to address the concerns contained herein.

The NHPA is a federal law of significant importance to Tribal Nations. As detailed in the attached position paper of NHBP, Section 106 of the NHPA provides an important process that allows Tribal governments to inform federal decisionmakers about the potential impacts that a federally funded project may have on Tribal sacred places and cultural resources. Contrary to what some people may believe, longstanding federal law and regulations protect Tribal Nations' access to and use of sacred places and cultural resources regardless of whether they are located on current lands we own. The protection of these places and resources recognizes the historic federal actions to displace us from or diminish our land bases. Regardless of our existing land base, our sacred sites and cultural resources continue to be of critical importance to our communities, our traditions and our future. Congress recognized this when it enacted Section 106 of the NHPA, and Title III of the BAAJA seeks to undermine that Congressional intent.

If the Senate declines to eliminate Title III from the BAAJA, substantial revisions are necessary before the legislation advances. At a minimum, those revisions must address the following significant problems and concerns:

1. **Unprecedented federal takeover of Tribal Historic Preservation Office functions.** Title III's biennial evaluations, potential funding suspensions, and authority for the Department of the Interior to assume Tribal Historic Preservation Officer functions—including after missed deadlines—shift oversight from Tribal Nations to federal agencies, undermining tribal sovereignty and self-determination. Without a funded, qualified workforce, federal takeover would be unworkable and likely cause further delay in Section 106 reviews. The bill also permits audits of Tribal Historic Preservation Office funds regardless of whether offices receive or use federal funding. Some tribes fund these offices entirely themselves; the federal government has no authority to audit tribal funds.

2. **Redefining Tribal Sacred Places and Cultural Resources.** For the first time, federal law would define what makes a place sacred to a Tribe. Federal officials could determine sacred status and harms without Tribal input. The definition of "property of traditional religious or cultural importance" narrows current protections, excluding many sacred landscapes, including mountains and rivers. By limiting visual and cultural effects and focusing on project footprints, the bill could allow harm to Tribal sacred viewsheds, ceremonial sites, and landscapes without recognizing their ongoing cultural significance, landscape-scale effects, or cumulative impacts.

3. **Unrealistic deadlines and loss of meaningful Tribal consultation.** Title III replaces mandatory Section 106 Tribal consultation with optional, time-limited involvement, allowing agencies to omit Tribal input at key stages and make decisions without prior notice. Tribes may learn of agency decisions only after they are final. Any reforms to the Section 106 process should require early agency notice, complete project information, sensitive-information protections, additional review time, and senior-level government-to-government consultation before final action. Uniform deadlines ignore Tribes' geographic responsibilities, limited THPO staffing, project complexity, and the time needed to gather culturally sensitive information. Nonresponses by Tribes should not imply consent, waiver, or lack of significance. Rigid, compressed reviews may prevent identification and evaluation of Tribal sacred places, cultural landscapes, access routes, and other resources known through Tribal expertise. Congress specifically wanted meaningful Tribal consultation when it passed the NHPA, and the BAAJA undermines that.

4. **Insufficient safeguards for confidential cultural information.** Tribes must be able to continue to participate in the Section 106 process without disclosing sacred sites' or other sensitive resources' *precise* location, character, or use. BAAJA creates a massive privacy loophole between applicants (who under BAAJA would act as intermediary) and section 304

(confidentiality requirements that only apply to federal agencies, not private applicants). Any revisions to the existing process must preserve existing statutory protections and require secure handling of information Tribes identify as confidential. This is to protect against longstanding history of individuals looting or desecrating Tribal sacred sites and cultural resources.

5. **Unfunded mandates and inadequate THPO capacity.** New metrics and penalties cannot accelerate reviews by chronically underfunded Tribal programs. The bill authorizes but does not guarantee THPO funding and provides less support than current levels. Congress should instead provide mandatory, dependable funding and authorize supplemental, transparently administered project-proponent contributions that neither influence agency decisions nor replace Historic Preservation Fund support.

6. **Unreasonably short judicial review periods.** Although we do not oppose shorter judicial review periods, reducing the existing six-year limitations period to 150 days is unreasonable. Tribes need adequate time to obtain records, assess effects on Tribally identified resources, complete governmental processes, and determine whether litigation is necessary, preserving accountability and meaningful judicial access. The bill also prevents courts from halting projects that violate Section 106, limiting remedies to delays for reassessment and weakening legal protections.

The data on the existing federal permitting process does not support the extreme changes to Section 106 of NHPA process. Data shows Section 106 is not a major obstacle to federal permits; historic preservation and endangered species reviews are less burdensome than air permits. Only 2.5% of projects faced lengthy Section 106 reviews in a decade; most delays are due to capacity issues. Review delays primarily stem from agency capacity and staffing constraints, not procedural complexities.

Meaningful improvements to the Section 106 process can be accomplished through the federal rulemaking process. In fact, the federal Advisory Council on Historic Preservation has begun the process of changing the existing regulations that govern the NHPA. Given the language of Title III of BAAJA, NHPB and the United Tribes of Michigan prefer that Congress defer to the rulemaking process for any revisions to the Section 106 process. The language of Title III of the BAAJA was developed without any meaningful consultation with Indian Country or State Historic Preservation Officers. The bill language is ripe with inaccuracies and fails to address the primary problems with the existing Section 106 process, which in our view are primarily the result of failures of federal agencies. Rulemaking would permit the responsible federal agencies to develop reforms through notice and comment, consultation with Tribal Nations, engagement with State and Tribal Historic Preservation Officers and other affected parties, and careful review of how proposed changes would operate across different agencies and project types. Rulemaking is better suited than prescriptive legislation to reduce procedural inefficiencies in

the Section 106 process and can be conducted in a manner that upholds the federal government's trust, treaty, and consultation obligations.

The most durable path is to remove Title III of the BAAJA and direct the appropriate federal agencies to consider targeted Section 106 improvements through rulemaking conducted in meaningful consultation with Tribal Nations. If Title III remains, the Senate should not advance it without correcting the defects described above and ensuring that any permitting reform strengthens—rather than diminishes—tribal participation and the protection of irreplaceable historic and cultural resources. Tribal Nations should not be forced to pay the price of permitting reform.

Thank you for considering these important concerns with Title III of the BAAJA. NHBP would greatly appreciate an opportunity to further discuss them with you.

Sincerely,



Robert Larson
Tribal Council Treasurer